

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 1:16cr265
	.	
vs.	.	Alexandria, Virginia
	.	December 12, 2017
NICHOLAS YOUNG,	.	9:00 a.m.
	.	
Defendant.	.	
	.	
.	

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

VOLUME II

APPEARANCES:

FOR THE GOVERNMENT:	JOHN T. GIBBS, AUSA GORDON D. KROMBERG, AUSA EVAN N. TURGEON, SAUSA United States Attorney's Office 2100 Jamieson Avenue Alexandria, VA 22314
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FOR THE DEFENDANT:	NICHOLAS D. SMITH, ESQ. David B. Smith, PLLC 108 North Alfred Street Alexandria, VA 22314 and LINDA MORENO, ESQ. Linda Moreno P.A. 511 Avenue of the Americas No. 2 New York, NY 10011
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ALSO PRESENT:	SA NICHOLAS CASLEN NICHOLAS ENNS FABIAN VERA
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(Pages 154 - 425)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 OFFICIAL COURT REPORTER: ANNELIESE J. THOMSON, RDR, CRR
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I N D E XDIRECT CROSS REDIRECT RECROSSGOVERNMENT'S WITNESSES:

Khalil Sullivan	168	221	244	
John Gervino	247	253	256	
SA John Richard Minichello	263	284	342	345
Mo	347	381		

EXHIBITSMARKEDRECEIVEDGOVERNMENT'S:

No. 1-101		274
1-102		275
1-103		276
1-200		271
6-101-2		351
6-102-2		354
6-103-2		355
6-103-3		356
6-103-5		357
6-103-6		358
6-104-2		361
6-104-3		363
6-105-1		367
6-106-4		370
6-107-1		371
6-108-1		372
6-108-2		375
6-109-4		376
6-109-5		378
6-109-6		379
6-110-1		365
6-201		280

1		<u>EXHIBITS</u>	
2		<u>MARKED</u>	<u>RECEIVED</u>
3	<u>GOVERNMENT'S:</u>		
4	No. 6-202		278
	6-203		282
5	7-201A		377
	7-201C		377
6	9-101		212
7	9-102		171
	9-103		181
8	9-104		185
	9-105		359
9	9-106		344
10	9-107		344
	9-108		172
11	11-202A	203	203
	11-220		215
12	11-500		200
13	12-31		258
	12-32		259
14	12-33		262
	12-37		260
15	16-101 and 16-102		259
16	16-103		260
	16-105		263
17	16-106, 16-401 and 16-402		260
18			
19	<u>DEFENDANT'S:</u>		
20	No. 1		295
	12		421
21			
22			
23			
24			
25			

1 P R O C E E D I N G S

2 (Defendant present, Jury out.)

3 THE CLERK: Criminal Case 16-265, United States of
4 America v. Nicholas Young. Would counsel please note their
5 appearances for the record.

6 MR. KROMBERG: Good morning, Your Honor. Gordon
7 Kromberg, John Gibbs, and Evan Turgeon for the United States.

8 THE COURT: Good morning.

9 MR. SMITH: Good morning, Your Honor. Nicholas Smith
10 for defendant Nicholas Young, as well as Linda Moreno and our
11 paralegal, Nicholas Enns.

12 THE COURT: Good morning.

13 MS. MORENO: Good morning.

14 THE COURT: All right, we still are waiting on two
15 jurors. I'll have my court security officer continue to
16 monitor that situation, but I understood there was a pretrial
17 matter?

18 MR. KROMBERG: There is, Your Honor. Based on the
19 opening statement from defense yesterday, where Ms. Moreno said
20 that the government -- the agents were frustrated that the case
21 was going slowly and that she, she was quoting from, I guess, a
22 text message about how the agents were hitting the case with a
23 defibrillator, it seems to me there's two issues there.

24 One, the issues in this case are inducement of
25 predisposition, and inducement is measured by what happened,

1 not what the agents thought should happen or thought of doing
2 but didn't do. So if we go into what the agents were thinking
3 about but didn't do or why they did what they did, I think it's
4 irrelevant to the issue of whether the defendant was induced or
5 not. Whether he was induced or not is measured by what
6 happened, what he saw, not what the agents said among
7 themselves.

8 The second -- related to that, though, is if they
9 want to talk, if the defense wants to get into why the agents
10 were frustrated, then it's only fair that the government gets
11 to answer why the agents were frustrated, and the agents were
12 frustrated, as you've heard, because of the things that were
13 said by the defendant that caused the agents to think that
14 Mr. Young was a very great danger.

15 So I think the best solution here is the defense
16 should -- the Court should rule it irrelevant to what the
17 government agents were thinking and what they were talking
18 about because that's irrelevant to whether he was induced or
19 not. The inducement is every -- there's only text messages and
20 e-mails. There's no verbal communications between the agents
21 and the defendant. It was only text messages and e-mails,
22 which are all going to be in evidence.

23 THE COURT: All right, who wants to address that?

24 MR. SMITH: I'll address that, Your Honor. So as the
25 Court knows, there are two elements to --

1 THE COURT: Wait, wait, wait, wait.

2 All right, go ahead.

3 MR. SMITH: The Court is familiar with the entrapment
4 standard, which contains two elements. The first is
5 inducement, as Mr. Kromberg noted, and the second is
6 predisposition.

7 The inducement prong of entrapment is government
8 focused. It focused on what the solicitation of the
9 defendant's crime consisted of, how was the crime -- how was
10 the crime solicited.

11 The text messages and e-mails that Mr. Kromberg is
12 referring to are actually the, contain the process by which the
13 agents were crafting the solicitation message to the defendant.
14 Now, there was an original -- there was one message, and then
15 it was fixed because that might --

16 THE COURT: All right, anytime that door is open --

17 MR. SMITH: Okay.

18 THE COURT: -- it means the jury possibly could hear
19 what's in the courtroom, so we need to stop talking, all right?

20 MR. SMITH: So Mr. Kromberg is correct that part of
21 the entrapment standard focuses on the defendant, the
22 defendant's mental state, what was the defendant's mental state
23 before he first encountered government agents in the
24 investigation, but when it comes to inducement, and we
25 understand from the government's opening statement that

1 inducement is a strong part of their case, they're going to be
2 pushing the argument that there was no inducement in this case,
3 these messages that Mr. Kromberg are referring to are critical
4 to establish what kind of solicitation there was, how long did
5 the solicitation exist, why were certain solicitation messages
6 used rather than others.

7 If it's the government's position that there was an
8 original solicitation of crime message that went too far, well,
9 why did it go too far?

10 THE COURT: Well, wait. The problem is, though, you
11 will be opening the door to permit the government to bring in
12 all of the thought process, all of the concerns that the agents
13 had, which means if they thought that your client had the
14 potential to blow up a federal courthouse or federal buildings,
15 that's going to open the door to that entire line, and I don't
16 really think you want to do that. You should consult, I think,
17 with Ms. Moreno on this as well.

18 Right now, the government is correct that in terms of
19 inducement, it has to do with what specifically was presented
20 to your client. All the background chatter, all the planning,
21 why we did this rather than that, is actually irrelevant to
22 that, but if you're going to go into that area, if you really
23 want to go in there, then it's going to open the door. That's
24 the open door issue.

25 MR. SMITH: And I will go speak with my cocounsel,

1 but I want to make one factual point first. The messages and
2 the e-mails that Mr. Kromberg is referring to are from 2015 and
3 2016. The opening door risk that the Court is referring to is
4 from six years before that, so we're only referring to
5 concerns -- the crafting of the solicitation message between
6 2015 and '16, Your Honor, so we're not launching a broadside on
7 the FBI's decision to investigate at any other point of the
8 investigation. It's --

9 THE COURT: It will reasonably open the door to the
10 government being able to explain why they were so concerned,
11 why they focused on your client and continued to focus on him
12 and were developing different strategies.

13 As I understand their position, they truly believed
14 up until probably the very end that your client really was a
15 very serious menace, and that would justify their frustration
16 in that they didn't get the smoking guns that they were
17 expecting to get. They didn't get as much as they thought they
18 would get, but that's an issue you're going to open up.

19 MR. SMITH: Okay.

20 THE COURT: So you ought to consult about that.

21 MR. SMITH: We, we will consult --

22 THE COURT: All right.

23 MR. SMITH: -- but I'll just note for the record once
24 that the concerns about -- that Mr. Kromberg referenced in
25 opening and to which we objected were from six years before the

1 messages that we're --

2 THE COURT: I understand that.

3 MR. SMITH: Okay.

4 MR. KROMBERG: If I could correct the record, Judge,
5 first, they weren't six years before. They were sent in 2011,
6 and these text messages --

7 THE COURT: Just one second. Any problem with
8 whoever just came in?

9 THE COURT SECURITY OFFICER: No, ma'am.

10 MR. KROMBERG: The text messages were 2014, 2015, and
11 2016. And Special Agent Caslen, as the summary witness, will
12 testify if asked that he didn't sleep at nights because he was
13 concerned that that man was a danger because he had talked
14 about kidnapping an FBI agent and torturing her, and he had a
15 plan to smuggle weapons into this courthouse that the marshal
16 would say might well work.

17 THE COURT: Well, we're not going to get into that no
18 matter what, or that will be definitely sealed.

19 All right, are we still waiting on a juror?

20 THE COURT SECURITY OFFICER: One.

21 THE COURT: All right, we have one juror who's not
22 here.

23 So have you-all decided?

24 MR. SMITH: The witness hasn't -- the relevant
25 witness hasn't taken the stand yet, so, Your Honor, we have

1 heard the Court's message loud and clear, and we understand
2 that that is the risk, that door opening, but because the
3 witness has not testified yet, we can't exactly make a decision
4 about which direction we want to go in with cross-examination
5 yet, but we have received the Court's message and understand
6 that that would be --

7 THE COURT: All right.

8 MR. SMITH: Does Your Honor understand what I'm --

9 THE COURT: Well, yes and no. I mean, again, the
10 first witness who's testifying, this is irrelevant to that
11 witness.

12 MR. KROMBERG: No.

13 THE COURT: It's not?

14 MR. KROMBERG: This is the witness -- excuse me.

15 This is the witness who would testify to those facts.
16 If, if we're going to get into why the FBI was so afraid of
17 this defendant, it's going to be on the basis of the statements
18 that the defendant made to this witness.

19 THE COURT: Khalil.

20 MR. KROMBERG: Correct.

21 THE COURT: All right. Then you need to decide now.
22 Now, we're waiting on a juror. I'm going to recess until the
23 juror gets here. You-all consult, and then when I come back
24 in, all you have to do is say, you know, we're going there or
25 we're not going there.

1 MR. SMITH: Okay.

2 THE COURT: That's all you have to tell me. And
3 that's the cue.

4 MR. SMITH: That's about five minutes, Your Honor?

5 THE COURT: I don't know. We can't do anything until
6 the last juror arrives, so we'll recess court.

7 (Recess from 9:09 a.m., until 9:17 a.m.)

8 (Defendant present, Jury out.)

9 THE COURT: All the jurors are here now, Ms. Moreno,
10 so we want to get started. Yes.

11 MS. MORENO: Yes, Your Honor. As Mr. Smith said, we
12 understand the Court's message. We understand the issue about
13 using the rationale why the agents were frustrated. That would
14 open the door to why they felt that Mr. Young was a great
15 danger.

16 Understood. Not going to go there, but I will remind
17 the Court that yesterday in his opening, in Mr. Kromberg's
18 opening, he talked about the federal courthouse or the federal
19 building, and I objected, and the Court sustained that. So if
20 it's a tradeoff here that we're not going to go into certain
21 areas, we would ask the same of the government in not going
22 into not only the sexual torture comment apparently that
23 Mr. Young made, which the Court already ruled was out, but also
24 the stuff about going into the federal courthouse.

25 And I will also tell the Court that it's not a

1 comment that Mr. Young made that he was going to go into the
2 federal courthouse, which I think the Court might be under that
3 impression. He said someone could do that. So I don't, I
4 don't think that's proper.

5 THE COURT: All right. Well, I've already indicated,
6 I think at this point, let's get this case started. Get your
7 direct in, and let's see how things go.

8 MR. KROMBERG: Right. I'm sorry, but I have to go
9 back to what I said in opening was I did not mention
10 courthouse; I said federal building. Ms. Moreno objected, you
11 sustained it, but then after the openings, we talked again, and
12 I said that last week, I had said I was going to use court- --
13 I was going to use "federal building" instead of "courthouse,"
14 and as I said, I was going to lead the witness through it to
15 make sure he didn't say "courthouse," and Your Honor said,
16 "Don't lead."

17 THE COURT: Yeah, but I assume you talked to the
18 witness --

19 MR. KROMBERG: Yes.

20 THE COURT: -- ahead of time and said, "Do not
21 mention 'courthouse.'"

22 MR. KROMBERG: Yes.

23 THE COURT: All right.

24 MR. KROMBERG: We're going to talk federal building,
25 and that's all we're going to talk about.

1 THE COURT: All right. Well, that is appropriate.
2 That's how I parsed that particular issue.

3 MR. KROMBERG: Thank you.

4 THE COURT: All right, let's get the jury in.

5 (Jury present.)

6 THE COURT: Good morning, ladies and gentlemen.
7 Again, you-all have a seat. If some of you feel that you can't
8 see the witness, please make sure that you move down to the
9 further seats because it is important to be able to see. It
10 probably -- once there's attorneys standing at the podium, it
11 may make it more difficult for some of you, all right? And
12 again, if you feel that you want to, just, you know, move on
13 down.

14 I want to thank you for being here this morning.
15 Again, I know sometimes -- there was some kind of a problem on
16 the beltway. We can't start until all of you are here,
17 however, so if you can try to make an effort to be here by nine
18 o'clock?

19 But we're ready to go. We're going to start with the
20 government's first witness.

21 MR. KROMBERG: Your Honor, the government calls
22 Khalil.

23 THE COURT: All right, Khalil.

24 KHALIL SULLIVAN, GOVERNMENT'S WITNESS, AFFIRMED

25 THE WITNESS: Good morning.

Sullivan - Direct

168

1 DIRECT EXAMINATION

2 BY MR. KROMBERG:

3 Q. Good morning, Khalil. For purposes of today, you're going
4 to be using the name "Khalil," and what was the last name that
5 you were known by when you knew the defendant?

6 A. Khalil Sullivan.

7 Q. Khalil Sullivan. Spell "Sullivan" for the record, if you
8 would.

9 A. S-u-l-l-i-v-a-n.

10 Q. All right. And between 2010 and 2012, were you acting as
11 an undercover officer for the FBI?

12 A. Yes, sir.

13 THE COURT: You need to move closer to the microphone
14 and speak up.

15 THE WITNESS: Yes, ma'am.

16 Yes, sir.

17 BY MR. KROMBERG:

18 Q. During your undercover work, what did you say Khalil
19 Sullivan was? Or let me change that: Who did you say Khalil
20 Sullivan was when people asked?

21 A. I portrayed myself as an active duty U.S. Marine that was
22 a new convert to Islam.

23 Q. And where did you say you were from?

24 A. I was from Boston, Massachusetts.

25 Q. And as Khalil Sullivan, did you know the defendant,

Sullivan - Direct

169

1 Nicholas Young?

2 A. Yes, sir.

3 Q. Can you please point him out?

4 A. He's in the middle of the table right there, sir
5 (indicating).

6 MR. KROMBERG: And, Judge, the record will reflect
7 that the witness correctly identified the defendant?

8 THE COURT: Wait. Is there any objection to that?

9 MS. MORENO: No objection.

10 THE COURT: All right, the witness has identified the
11 defendant.

12 BY MR. KROMBERG:

13 Q. So how did you meet Nicholas Young?

14 A. I first met -- I first met Mr. Young at a party in
15 Alexandria, I believe.

16 Q. A wedding?

17 A. Yes, sir.

18 Q. And was that in December of 2010?

19 A. Yes, sir.

20 Q. Now, do you have -- you have a book with you?

21 A. Yes, sir.

22 Q. Are those your notes?

23 A. Yes, sir. These are the notes as they pertain to
24 Mr. Young.

25 Q. Okay. And so you can refer to your notes at any time

Sullivan - Direct

170

1 because we're going to be talking about things that happened
2 five -- four, five, and six years ago.

3 A. Yes, sir.

4 Q. Okay. So at that wedding, December 2010, how did it come
5 about that you met Nicholas Young?

6 A. I was invited to the party, and he, he happened to be at
7 the party also, and through the course of conversation that
8 night, we struck up a conversation with each other.

9 Q. In your role as an undercover officer, why were you going
10 to that wedding?

11 A. I was going there -- I was going to that party, my
12 objective was to meet Saleh Al-Barmawi.

13 Q. Okay. Can you please take a look at Government Exhibit
14 9-102, who the court security officer will --

15 THE COURT: Now, do you have a set for the Court?

16 THE CLERK: Yes, I have it.

17 THE COURT: All right.

18 THE WITNESS: Yes, sir.

19 BY MR. KROMBERG:

20 Q. Okay. Do you recognize that photo?

21 A. Yes, sir.

22 Q. And who is that?

23 A. This is Saleh Al-Barmawi.

24 MR. KROMBERG: Judge, we'd like to move into evidence
25 and publish to the jury the photo of Saleh Al-Barmawi that is

Sullivan - Direct

171

1 Government Exhibit 9-102.

2 THE COURT: Any objection?

3 MS. MORENO: No objection.

4 THE COURT: All right, it's in.

5 (Government's Exhibit No. 9-102 was received in
6 evidence.)

7 THE COURT: I think we should spell that name, too.

8 BY MR. KROMBERG:

9 Q. Can you spell Al-Barmawi's name?

10 A. Probably not.

11 Q. Well, for purposes of the record, it will be Saleh,
12 S-a-l-e-h, last name Al-Barmawi, A-l-B-a-r-m-a-w-i?

13 A. Sounds good to me.

14 Q. Okay. Now, when you're at the wedding and you meet
15 Mr. Young, what were the topics of your conversation with
16 Mr. Young at that wedding?

17 A. My topics of conversation, we started off, we had similar
18 backgrounds as far as both coming from a Christian background.
19 We talked about my job, his job as a police officer.

20 Later on, we discussed Islam, discussed Islam in
21 America. Mr. Young felt that there was a -- he talked about,
22 he felt -- he believed that there was a conspiracy against,
23 against Muslims in the United States.

24 Portraying myself as a newer Muslim, he talked about
25 some of the mosques in the area. He talked about the Adams

Sullivan - Direct

172

1 Center, and -- he talked about the Adams Center in Loudoun
2 County, Virginia. He cautioned me against going there because
3 of the Sufis that were there. He didn't really --

4 Q. Before you go any farther --

5 A. Sorry.

6 Q. -- what did you -- can you explain not in detail, we're
7 not asking you to be an expert on Sufis, but just what do you
8 mean when you say Sufis? Is it a sect of Islam?

9 A. Yes. Sufism is a --

10 Q. A different sect than what Mr. Young was?

11 A. At that point, I didn't know what sect he was, but the
12 targets of the investigation were not Sufis.

13 Q. Was there any discussion about Farooque Ahmed? Was there?

14 A. Yes, sir.

15 Q. Okay. Now, before we talk about that, I'd like you to
16 take a look at Government Exhibit 9-108.

17 THE COURT: Any objection?

18 MS. MORENO: No objection.

19 THE COURT: All right, it's in.

20 (Government's Exhibit No. 9-108 was received in
21 evidence.)

22 MR. KROMBERG: Can you publish 9-108?

23 Q. And who is Farooque Ahmed? Who is that?

24 A. Farooque Ahmed, he's an individual that was arrested for,
25 I believe, conspiring with al Qaeda for a plot against the

Sullivan - Direct

173

1 Metro system.

2 Q. Right. And what was your conversation with Metro Police
3 Officer Young about Farooque Ahmed the first day you met him?

4 A. When I, when I spoke to him, he mentioned -- he talked
5 about -- he didn't name Farooque by name, but he talked about
6 his case, that individual was recently arrested, and he talked
7 about him having a conversation with another Muslim who was
8 condemning Farooque Ahmed for his actions.

9 Mr. Young's response to that was that we should, we
10 should support the -- we should support the Muslim until he's
11 judged, then even after he's judged, he talked about just
12 providing support for him, you know, for him and his, his
13 family. That's sort of the -- he didn't get into the details
14 of supporting his actions or anything like that. He was just
15 talking about more just supporting him and just supporting his
16 family through this.

17 Q. So did you end up obtaining Mr. Young's phone number that
18 day?

19 A. Yes, sir.

20 Q. How did that come about?

21 A. Saleh directed -- I believe Saleh directed Mr. Young to
22 give me his phone number.

23 Q. Saleh Al-Barmawi?

24 A. Saleh Al-Barmawi, yes, sir.

25 Q. So how -- by the way, do you recall that phone -- what

Sullivan - Direct

174

1 that phone number was?

2 A. No, I do not.

3 Q. How did your relationship with Mr. Young develop after
4 that time?

5 A. It developed -- it just developed into, like, a social,
6 friendly relationship after that. It just -- we would go to,
7 occasionally go to prayer services together, go out to eat.
8 Later on, we went to some movies together, and just developed
9 into a social, friendly relationship.

10 Q. What -- who else traveled in the same circles that you
11 would meet together with Mr. Young?

12 A. Are you talking initially or over the course of the entire
13 case?

14 Q. Just starting out, starting out.

15 A. Starting out, it was mostly myself -- it was mostly
16 myself, Saleh Al-Barmawi, and there were other, other
17 individuals at that time, because we would -- there would be
18 sort of circles of people that would go to sort of the same,
19 you know, the same mosques. We'd attend classes together. I
20 can't recall all the people initially that were, that were
21 involved.

22 Q. What could you see of Mr. Young's relationship with Saleh
23 Al-Barmawi, with Saleh Al-Barmawi?

24 A. My observations and the statements that were made to me,
25 that they had a very close relationship with each other. The

Sullivan - Direct

175

1 first night that I met, Saleh and Mr. Young were talking about
2 traveling to Jordan together, traveling to hajj together, which
3 is significant in Islam.

4 Q. That's a trip to Mecca?

5 MS. MORENO: Objection.

6 THE COURT: And what's the basis for the objection,
7 Ms. Moreno?

8 MS. MORENO: Expert testimony, foundation.

9 THE COURT: Oh, I think a member of that religion can
10 talk about what the hajj is. Overruled.

11 BY MR. KROMBERG:

12 Q. What, what did Saleh Al-Barmawi say about jihad while you
13 and Nick Young were together?

14 A. Saleh talked about jihad as --

15 MS. MORENO: Objection. Hearsay.

16 MR. KROMBERG: Judge --

17 THE COURT: Is it being offered for the truth of its
18 contents?

19 MR. KROMBERG: No. We're putting in the fact that
20 Saleh Al-Barmawi is the person who radicalized, if anyone --

21 MS. MORENO: Objection.

22 MR. KROMBERG: -- not him.

23 THE COURT: I'm going to overrule the objection. Go
24 ahead.

25 BY MR. KROMBERG:

Sullivan - Direct

176

1 Q. What did Saleh Al-Barmawi say about jihad in the presence
2 of Nick Young?

3 A. There were numerous conversations about jihad. Saleh,
4 Saleh advocated -- he first said that jihad is, you know,
5 martyrdom is the highest level. He talked about martyrdom,
6 becoming a shaheed, which is martyr in Islam, about getting to
7 the highest level of paradise. He talked about that jihad is
8 an individual responsibility.

9 Q. Now, when you say "individual responsibility," as opposed
10 to what?

11 A. As opposed to it's up to the individual to engage in
12 jihad, not necessarily wait for, like, a leader or somebody to
13 tell you to go do it.

14 Q. Okay.

15 A. He also talked about that where jihad is, jihad against
16 the Israelis, jihad -- he used the word that Israel and
17 Americans are his enemy.

18 He also talked about scholars that profess violent
19 jihad against the United States.

20 Q. Did he talk about sheikhs that did not tell people to
21 fight?

22 A. Yeah. He said that there are certain sheikhs that don't
23 tell people to engage in jihad, and he said that those people
24 are wrong.

25 Q. What did he say about Usama Bin Laden?

Sullivan - Direct

177

1 MS. MORENO: Objection.

2 THE COURT: Again, I'm going to overrule that given
3 the nature of the issues in the case.

4 THE WITNESS: He, he discussed Usama Bin Laden. He
5 said that he wished that he could have got more fatwas from
6 him. And a fatwa is just an Islamic ruling from a scholar. So
7 he mentioned that he would have liked to got more rulings from
8 Usama Bin Laden, and he -- when he talked about Usama Bin
9 Laden, he used the word that he made many beautiful statements.

10 He did not elaborate much on that, but he also said,
11 talking about Usama Bin Laden, he said there were some things
12 that he didn't necessarily agree with Usama Bin Laden said, but
13 he kind of smirked and didn't elaborate on those facts.

14 Q. So did, did -- who, if any, leaders -- Islamic leaders did
15 Saleh Al-Barmawi say that he himself looked up to?

16 A. He --

17 Q. And again, I'm only talking about conversations that when
18 you were with Mr. Young.

19 A. Yes. There's one particular sheikh that Saleh Al-Barmawi
20 said that he looked up to was Mohammad Al-Maqdisi, and he said
21 that he's a Jordanian, one of the greatest scholars. He said
22 that Maqdisi is on America's hit list because he openly
23 professes jihad.

24 Q. What did Saleh Al-Barmawi say about Anwar Awlaki?

25 MS. MORENO: Objection.

Sullivan - Direct

178

1 THE COURT: Overruled.

2 THE WITNESS: I can't recall what he said about Anwar
3 Awlaki.

4 Q. How about Ali Al-Timimi?

5 MS. MORENO: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: I don't believe that conversation on
8 Al-Timimi was in the presence of Mr. Young.

9 BY MR. KROMBERG:

10 Q. Okay. We'll leave it then.

11 So what did Saleh Al-Barmawi say in the presence of
12 Nicholas Young about American soldiers or people who worked
13 with Coalition Forces?

14 A. Yeah, because we had a conversation but not in the
15 presence of Mr. Young, but there was one particular --

16 THE COURT: Wait, wait, wait, I'm sorry. These are
17 only conversations that you recall were made in the presence of
18 Mr. Young.

19 THE WITNESS: Yes, ma'am. I was just clarifying that
20 when he asked about the soldiers, that conversation was not in
21 the presence of Mr. Young, but there was a conversation about a
22 particular woman that worked for, worked for U.S. Forces.

23 BY MR. KROMBERG:

24 Q. That was in the presence of Mr. Young?

25 A. Yes.

Sullivan - Direct

179

1 Q. Yeah. And what was that conversation?

2 A. Saleh was saying that he, he expressed disgust for a woman
3 working with Coalition Forces, and he made the statement that
4 her working for Coalition Forces would be reason enough just to
5 shoot her.

6 Q. What did Saleh Al-Barmawi do about the possibility that
7 the FBI might be investigating him?

8 A. We would -- he would talk in codes sometimes. He would
9 lower his voice, but he would also -- if he wanted to talk
10 about certain, certain topics, we would actually leave and go
11 for walks.

12 Q. When you say "we," would it be we, you, Nicholas Young,
13 and Saleh Al-Barmawi?

14 MS. MORENO: Objection. Leading.

15 THE COURT: That's leading. Sustained.

16 BY MR. KROMBERG:

17 Q. Okay. Did you happen to go on walks around a golf course
18 with Saleh Al-Barmawi?

19 A. Yes.

20 Q. Who was with you when you did that?

21 A. Mr. Young.

22 Q. Okay. And what topics were -- what type of topics were
23 discussed when you'd go walking around the golf course?

24 A. I don't recall what topics were discussed at that time.
25 If I, if I could refer to my notes?

Sullivan - Direct

180

1 Q. You can refer to your notes at any time here.

2 A. Okay. I can't recall what, in the interests of time --

3 Q. We'll get back to that.

4 A. Okay.

5 Q. But the point is feel free to refer to your notes and --
6 so those notes are -- well, tell the jury about how those notes
7 got compiled. How did they get compiled?

8 A. These notes -- these are my reporting. Pretty much the
9 way the process would be is I would go out and I would have a
10 meeting, and then once the undercover meeting was completed, I
11 would come back and type my notes as soon as possible while the
12 event was still fresh in my, in my memory, and then those
13 reports were, were turned over to the FBI.

14 Q. Okay. And were those notes in front of you, are they
15 categorized by date?

16 A. Yes, sir.

17 Q. Take a look, if you would, at Government Exhibit 9-103.

18 A. Yes, sir.

19 Q. Do you recognize that photo?

20 A. Yes, sir. This is --

21 Q. In the future, when you look at the picture, you look at
22 it, don't show the jury the picture. You're just going to look
23 at the picture until the judge says the jury can see the
24 picture.

25 A. Okay. Sorry.

Sullivan - Direct

181

1 Q. Do you recognize that?

2 A. Yes, sir, I do.

3 Q. And who that?

4 A. It's Amine El-Khalifi.

5 THE COURT: There's no objection?

6 MS. MORENO: No.

7 THE COURT: It's in.

8 (Government's Exhibit No. 9-103 was received in
9 evidence.)

10 BY MR. KROMBERG:

11 Q. Who is Amine El-Khalifi?

12 A. Amine El-Khalifi was an individual that I associated with
13 that was later arrested for attempting to commit a suicide
14 bombing at the U.S. Capitol.

15 Q. So did Mr. Khalifi know Mr. Young?

16 A. They -- I would say they were not friends, they were not
17 close, but they knew of each other, yes.

18 Q. Were there occasions when you dined together, the three of
19 you?

20 A. Yes, sir.

21 Q. And how did that come about?

22 A. That came about, we were going to a lecture. Well, the
23 first time, it was just sort of groups of circles that we would
24 just go out to eat, like, after classes, after prayer services.
25 We would just go out to eat with each other, and that's how

Sullivan - Direct

182

1 sort of like the circles came together.

2 Q. So what topics did Khalifi tend to talk about when you and
3 he and Mr. Young were together?

4 A. There was, there was only a couple times that myself,
5 Khalifi, and Mr. Young were all together, but during those
6 times, Khalifi talked about -- he talked about martyrdom. He
7 talked about the highest level of paradise to become a shaheed
8 is to become a martyr, and he talked about that you would have
9 to die in battle to become a shaheed. He talked about his
10 Facebook account being shut down because he posted radical
11 mujahideen propaganda.

12 He talked about marksmanship. He asked me to teach
13 him how to -- he asked me to teach him about marksmanship, and
14 we also had a conversation --

15 Q. What was Mr. Young's involvement, if any, in the
16 discussion about marksmanship?

17 A. I don't recall the specifics about it. We would just --
18 him and I also, I believe, just talked about some basics of
19 marksmanship.

20 Q. When you say "him and I" both, were you referring to
21 Mr. Young and you or Khalifi and you?

22 A. Oh, Mr. Young and I.

23 Q. We're talking about marksmanship with Khalifi?

24 A. Yes. But it wasn't, it wasn't like a class or a lesson or
25 anything. We were just talking about marksmanship.

Sullivan - Direct

183

1 Q. Okay. Do you recall a dinner with Mr. Young and Khalifi
2 at Chili's restaurant in April 2011?

3 A. Yes, sir, I do.

4 Q. And what, if anything, do you recall that Mr. Khalifi said
5 about martyrdom in Mr. Young's presence?

6 A. That's when he spoke about martyrdom, basically obtaining
7 the highest level of paradise.

8 Q. What, if anything, do you recall him saying about life,
9 about this life?

10 A. About this life is just a test. He also, Mr. Khalifi
11 believed that God had a test or a task for me that was unknown
12 at this time, and we talked about -- we talked about martyrdom.
13 I believe he was talking about the different, you know, types
14 of martyrdom.

15 And at that time, Mr. Young mentioned that, something
16 to the effect that one of the greatest shaheeds, one of the --
17 I'd have to refer to my notes.

18 Q. Please do. That would be your notes from, that would have
19 been April 2011?

20 April 1, 2011.

21 A. Mr. Young just talked about one of the greatest shaheeds
22 is the man who initially fights the Muslim, becomes a Muslim,
23 and then fights the kufir as a Muslim, which a kufir is a
24 disbeliever.

25 Q. Was there a time when you said you were distancing

Sullivan - Direct

184

1 yourself from Mr. Khalifi, when you told Mr. Young that you
2 were distancing yourself from Mr. Khalifi?

3 A. Yes, sir.

4 Q. And how did that come about?

5 A. I would have to go -- it was a conversation where -- I
6 don't recall how exactly the conversation of Khalifi came up.
7 I talked about him posting radical, radical material on the
8 Internet, that I was distancing myself from that. Mr. Young
9 talked about that I should recommend that he goes to, he goes
10 to Syria.

11 Q. That you should recommend to who, that who goes to Syria?

12 A. Amine Khalifi.

13 Q. Mr. Young said that you should tell Khalifi to go to
14 Syria?

15 A. Yes.

16 Q. Go to Syria to do what?

17 A. He didn't, he didn't specify.

18 Q. Okay. And this was approximately when? 2011?

19 A. Yeah, 2011. And he said it -- we -- I mean, we had a lot
20 of hypothetical conversations, and, I mean, there were times we
21 were joking, there was times we were not joking, and it's --
22 these types of conversations we had, he never had a
23 conversation where he said, like, you know, this is the plan,
24 this is what you have to do, lay it out. It was just sort of a
25 statement, a statement that he made.

Sullivan - Direct

185

1 Q. What, if anything, did he say about your firearms?

2 A. My firearms? We talked about firearms a lot, just casual
3 conversations, but after Amine was arrested, I recall a
4 conversation where Mr. Young and I both legally possessed
5 firearms, and I made the -- I talked about possibly selling my
6 firearms so that if anybody thought that I was involved with
7 Amine or that I had anything to do with him, that maybe that
8 might lower suspicions.

9 And he mentioned -- when I mentioned that, he
10 mentioned that he necessarily wasn't going to sell his, but he
11 talked about the possibility of stashing his weapons, burying
12 his weapons and having, like, a topographical map to locate
13 them.

14 Q. Could you take a look at Government Exhibit 9-104? And
15 tell us if you recognize that person.

16 A. Yes, sir.

17 MS. MORENO: No objection.

18 MR. KROMBERG: All right.

19 (Government's Exhibit No. 9-104 was received in
20 evidence.)

21 MR. KROMBERG: Please publish 9-104.

22 Q. And who is that?

23 A. That is Liban Mohamed.

24 Q. Who was Liban Mohamed?

25 A. Liban Mohamed is an individual that over the course of

Sullivan - Direct

186

1 time radicalized and recruited me to go fight for Al-Shabaab.

2 Q. Well, let's start even before that. Where was Liban
3 Mohamed living when you met him?

4 A. In Alexandria, Virginia.

5 Q. Okay. And was there any relationship between Liban
6 Mohamed and Nicholas Young?

7 A. I -- from the first time when we met, it was my
8 understanding that Mr., Mr. Young and Liban were not friends
9 but knew each other because of -- we talked about the circles
10 before -- because of an individual named Zachary Chesser. So
11 it's my understanding that they physically saw each other
12 before but never really engaged in any kind of conversations.

13 Q. What was, could you tell, was the relationship between
14 Liban Mohamed and Saleh Al-Barmawi?

15 A. They knew each other well. There was a little bit of
16 animosity, animosity there.

17 Q. And what did that appear to be based on?

18 A. Well, the conversation that I had, now, this was a
19 conversation that I had with Saleh that was not in the presence
20 of Mr. Young.

21 MS. MORENO: Objection.

22 THE COURT: Well, in this -- this is a different kind
23 of question. This is asking the relationship between --

24 MR. KROMBERG: -- Al-Barmawi and Liban Mohamed.

25 THE COURT: So I'm going to overrule the objection.

Sullivan - Direct

187

1 THE WITNESS: Okay. Saleh Al-Barmawi and Liban
2 Mohamed both openly professed violent jihad to me, and what
3 Saleh Al-Barmawi was doing, he was upset about is that Liban
4 was too outspoken and sort of reckless, and he didn't give
5 specifics, but he felt that Liban in his -- how blatant he was
6 and how reckless he was, may have contributed to Zachary
7 Chesser being arrested.

8 Q. Okay. So now you were saying that you were involved with
9 Liban Mohamed in a plot, correct?

10 A. Yes, sir.

11 Q. In your undercover capacity?

12 A. Yes, sir.

13 Q. Please tell us about that.

14 MS. MORENO: Objection.

15 THE COURT: Overruled.

16 THE WITNESS: Over the course of my relationship with
17 Mr. Mohamed, he vetted me, provided me with extremist
18 propaganda. He provided me with extremist reading materials,
19 and slowly over time, he began to educate me, and he
20 radicalized me, to the point where once he felt comfortable
21 with me, he expressed a desire for me to travel to Somalia,
22 where I would, where I would train and fight with Al-Shabaab.

23 During that time, we actually went, we actually made
24 a plan to go overseas. We started collecting equipment,
25 material, and there were several people that were supposed to

Sullivan - Direct

188

1 go with us over to Somalia.

2 Q. And these several people, where were they from?

3 A. Still the Northern Virginia, the Northern Virginia area.

4 Actually, the Northern Virginia area and also Minnesota.

5 Q. And what time -- what time frame was this happening?

6 A. My relationship with Liban or, like, the planning phase?

7 Q. Both.

8 A. Okay. My relationship, I don't remember the exact time.

9 I met Liban in 2011, but the actual operational phase when
10 Liban and I were, were putting together a plan -- well, when
11 Liban was and I was just sort of part of that plan, was the
12 spring and summer of 2012.

13 Q. So what role did Mr. Young have in the plan for the young
14 men from Northern Virginia to go to fight in Somalia?

15 A. None.

16 Q. Why didn't you solicit Mr. Young to join that plan?

17 A. Because that, I mean, twofold. One, that just wasn't my
18 role. I wasn't a recruiter. I wasn't a radicalizer. That was
19 Liban's role. That was the first, but the second part, I
20 was -- he wasn't -- Liban felt that he was -- he told me at
21 times that he was suspicious of Mr. Young.

22 But Mr. Young just, he just wasn't naturally involved
23 in the plan like that. He never, he never expressed a desire
24 to me to, you know, to be involved in that, that type of
25 planning.

Sullivan - Direct

189

1 And also, as an undercover, I'm just an investigative
2 technique. I do what my case agents tell me to do, and I was
3 told specifically at that point to stay away from Mr. Young and
4 don't try to involve him in anything like that.

5 Q. So turning back to your activities with Mr. -- your
6 relationship with Mr. Young, what types of things would you
7 talk about just in, in your relationship with him from when you
8 met him in December 2010 to, to when you stopped seeing him in,
9 I think, April 2012?

10 A. I believe so, yes, sir.

11 Q. Yes. So what types of things did you talk about? What
12 types of things did you do?

13 A. Well, it would depend, where is Mr. Young and I alone, or
14 was Mr. Young and I with other people?

15 Q. Well, let's start with other people.

16 A. Okay. Other people, if we were with Saleh Al-Barmawi, the
17 conversations would be a lot of time Islamically based, a
18 little more, I would say, sort of conservative. We didn't talk
19 about a lot of -- there wasn't a lot of joking. I mean, you
20 know, if there were jokes, it was normally about the Jews, but
21 there wasn't a lot of joking. There wasn't a lot of
22 conversation outside of -- there was a lot of conversation sort
23 of outside of Islam just because that, you know, Saleh
24 Al-Barmawi, he was the one that was -- I mean, he was my main
25 target, so I would play off whatever conversations that, that

Sullivan - Direct

190

1 he was, that he was engaged in.

2 Q. You mentioned joking about the Jews. What do you mean,
3 joking about the Jews?

4 MS. MORENO: Objection.

5 MR. SMITH: Objection.

6 THE COURT: Only one attorney per witness, all right?
7 And it's Ms. Moreno's witness. All right.

8 I'm going to overrule the objection.

9 BY MR. KROMBERG:

10 Q. What do you mean -- what do you mean, joking about the
11 Jews?

12 A. There seemed to be a common thread between Mr. Young,
13 Saleh, and pretty much almost all of the, I won't say all but
14 the people that were targets of the investigation or just
15 involved in it. It was an overall hatred of Jews, where there
16 would be, it would be jokes.

17 Like, as of one time, I remember Saleh was telling a
18 joke in the presence of Mr. Young where the punch line was that
19 one -- people would be more upset at the death of one
20 non-Jewish bicycle maker than the death of 15 million Jews.

21 There was always conversations about the hatred of
22 Jews, you know, talking about how, wishing that Iran would
23 attack Israel, referring to the Jews as pigs.

24 Q. So you were talking about what you did when you were with
25 Saleh Al-Barmawi and Young. What types of things did you do

Sullivan - Direct

191

1 when you were just with Mr. Young, just the two of you?

2 A. We would just have just normal conversations. We'd talk
3 about politics, talk about work, I mean, talk about women
4 sometimes. We would just go to restaurants. A couple times,
5 we just went to movie theaters and didn't really talk that much
6 about Islam that much at all.

7 Q. What, if anything, was said about steroids?

8 MS. MORENO: Objection.

9 THE COURT: About what?

10 MR. KROMBERG: Steroids. Steroids.

11 THE COURT: I'm going to sustain that objection.

12 BY MR. KROMBERG:

13 Q. Okay. What attitude did he exhibit -- attitude Mr. Young
14 exhibit towards the FBI?

15 A. Overall distrust of the FBI and also some animosity
16 towards the FBI for the way that they handled questioning him
17 after Zachary Chesser was arrested for attempting to provide
18 material support to Al-Shabaab and threatening the South Park
19 rioters.

20 Q. What did he believe was the status of any investigation of
21 him?

22 A. He believed that both he and Saleh were currently under
23 investigation by the FBI.

24 Q. What did he say about having received classified
25 information to that effect?

Sullivan - Direct

192

1 A. There was a conversation one time where I don't recall how
2 it came to be, but Mr. Young told me that there was a woman
3 that, didn't specify where she worked, but that she, she sort
4 of tipped him off that he was under investigation. What
5 Mr. Young said is that this woman saw a piece of paper with his
6 name on it, and there were some other details, but relayed that
7 information to him.

8 He said that the woman first asked him: Are you a
9 member of some, like, organized crime ring, or something to
10 that effect, but that she relayed information to him that she
11 saw a paper that showed that he was under investigation.

12 Q. What did he say about the FBI listening to his
13 conversations?

14 A. He believed that, that his phones were wiretapped, which
15 means that the government was actively listening to his calls.

16 Q. What did he do to thwart the FBI listening to him?

17 A. I would observe him at times, he would take out his
18 battery, he'd take out his battery, but he told me that he
19 would change up phones.

20 Q. Well, did the term "burner phone" come up?

21 A. Yes, sir.

22 Q. What is a burner phone?

23 A. A burner phone is just a prepaid phone that's really
24 not -- that you can just -- it's not attached to a person. You
25 just -- it's not attached to you. It's just like a throw-away

Sullivan - Direct

193

1 phone, a prepaid phone.

2 Q. What did he say would happen if the FBI came to his house?

3 A. He -- there was times that we talked about that, and
4 again, like, there were times where we would, we would be
5 joking, we would be talking serious. He would just mention
6 that how, that he did have weapons and that he would be within
7 his rights to shoot somebody that was on his property.

8 Q. What did he say about the use of ballistic vests were for?

9 A. We talked -- again, he said not that this was his plan,
10 but he talked about that, configuring, like, sort of medieval
11 armor, configuring medieval armor that would not be for an
12 assault but more of like to fortify a position, and that
13 mentioned something about if somebody tried to raid his home,
14 that's what, like, I believe he said that assault rifles and
15 amphetamines are for.

16 Q. What did he say about looking for surveillance outside his
17 house?

18 A. He told me that, that there was a time where he believed
19 he spotted surveillance, and he was looking for surveillance
20 with a, I believe he said an AK-47 or some sort of rifle with a
21 light attachment.

22 Q. What did he say, if anything, about missing a doorknob on
23 his front door?

24 A. There was a time when his doorknob was missing, and he
25 made a comment, but he was laughing when he made this comment,

Sullivan - Direct

194

1 that he'd be able to stick, like, a shotgun out the doorknob so
2 it was like a, as a gun port.

3 Later on, though, I observed that that doorknob was
4 fixed.

5 Q. What attitude did Mr. Young exhibit towards informants?

6 A. He -- when we talked about informants, both Saleh and
7 Liban, we were all having a conversation about informants, and
8 it was the consensus that we should, we should try to uncover
9 who actually the informants are, right.

10 Q. That would be you, right?

11 A. That would be me, which is -- that would be correct.

12 Q. What did he say -- what did Mr. Young say would happen to
13 anyone that he found would betray him?

14 A. He made statements that, you know, their life expectancy
15 would be quickly diminished, and he also talked about, I
16 believe, I can't recall if he said head or feet being in cinder
17 blocks and thrown into Lake Braddock.

18 Q. Did Young -- what, if anything, did he say about why he
19 was unlike Amine Al-Khalifi?

20 And could you put Khalifi on? That's the guy who was
21 arrested for the suicide bomb attack attempt at the Capitol.

22 A. There was a time when he was mentioning that Amine was
23 very, very outspoken, and I believe that he said something to
24 the effect that if I was going to do something, like, nobody
25 would know about it, kind of like he wouldn't talk about it. I

Sullivan - Direct

195

1 believe that was sort of the crux of the conversation.

2 Q. What, if anything, did he say about going postal?

3 A. He just talked, you know, just through conversations
4 sometimes, he talked about -- we both had conversations where
5 it was just, you know, he said that, you know, if I went
6 postal, that, you know, that he had a large amount of firearms.

7 Q. What, if anything, did he say about bulletproof vests and
8 going postal?

9 A. We talked about bulletproof vests. A lot of times, he
10 mentioned that he had bulletproof vests. There were times
11 where he asked me about bulletproof vests, what types I had.

12 I believe there was a conversation where he asked me
13 if I had ever known of anybody that was, like, shot with a
14 bulletproof vest, and he -- the conversations were just
15 basically around that, about different levels of bulletproof
16 vests.

17 Q. What, if anything, did he say about the possibility of
18 attacking an FBI establishment?

19 A. That, that a couple -- I believe that a couple
20 well-trained people would be able to attack the FBI
21 establishment.

22 Q. So what, what, if anything, did he say about someone with
23 his skills?

24 A. What -- do you recall what date that was?

25 Q. Hang on. I will get it for you.

Sullivan - Direct

196

1 March 12, 2011, if I can refer you to your notes.

2 A. 2011, you said?

3 Q. Yeah, March 12.

4 A. Oh, sorry. I thought you said 2012.

5 Q. March 12, 2011.

6 A. Give me one second, sir.

7 Okay. And the question was --

8 Q. What, if anything, did he say about someone with his
9 skills?

10 A. He didn't, he didn't necessarily specify what his
11 skills --

12 Q. Would you go to page 4 of your notes, if you would, for
13 that date?

14 A. Yes, sir. I'm looking at that.

15 He just mentioned that somebody with his skills could
16 attack an FBI establishment. He didn't specify what his skills
17 were.

18 Q. Did he say -- what, if anything, did he say about where
19 the FBI building was, the JTTF? Joint Terrorism --

20 A. Yeah, the JTTF. He said that it's in D.C., but he does
21 not know exactly what floor it is, but he could find out what
22 floor the JTTF is on. He also stated that if one person
23 attacked the JTTF, it would be suicide, but if more than one
24 person did it jointly, the untrained FBI would be in trouble.

25 Q. Okay. Is it correct that he talked about a plan by which

Sullivan - Direct

197

1 he could use his police credentials to smuggle weapons past
2 security?

3 MS. MORENO: Objection.

4 THE COURT: Sustained. That's leading.

5 BY MR. KROMBERG:

6 Q. What, if anything, did he say about using police
7 credentials to smuggle weapons past security in a federal
8 building?

9 A. Okay. He mentioned that --

10 Q. You're not going to talk about what --

11 A. Yes, I understand. He mentioned one time that he entered
12 a federal building and he was able to just show his police
13 credentials and that he could have -- that he discovered that
14 he could probably get easily four or five guns into that
15 establishment and that if he chose to do so, he would be able
16 to hand them out to other people.

17 Q. So how often were you seeing Mr. Young in early 2011? And
18 you can refer to your notes if it's helpful.

19 A. Early 2011, I mean, I was seeing him -- I was not seeing
20 him every single day, but again, he was not the, the target in
21 the investigation. So I would be seeing him but not on a, on a
22 daily basis and not -- nowhere near as frequently as other
23 individuals.

24 Q. So did there come a time -- or when did there come a time
25 when you stopped seeing him pretty regularly?

Sullivan - Direct

198

1 A. Yes, sir.

2 Q. And when was that?

3 A. When the focus of the investigation shifted from Mr. Saleh
4 Al-Barmawi to Liban Mohamed.

5 Q. Well, even, even before that, look at your notes for
6 April 4 --

7 A. Yes, sir, yes.

8 Q. April 4, 2011.

9 A. Yes, sir.

10 Q. Was there a time -- how long was it did it go between when
11 you saw him on April 4 and the next time you saw him?

12 A. Between, like, April and May, there was a -- it was a -- I
13 didn't see him, I didn't hear from him, and a lot of other
14 people didn't hear from him or see from him.

15 Q. Did he tell you that he was going somewhere on April 4?

16 A. No, he did not.

17 Q. When you next saw him in May, late May, did he tell you
18 where he had been?

19 A. No, sir.

20 Q. Okay. Did you ask him where he had gone?

21 A. No, I did not.

22 Q. Why not?

23 A. Because if he wanted me to know, he would have told me.

24 Q. Okay. What, if anything, did he say about having been in
25 combat?

Sullivan - Direct

199

1 A. I talked about my, my combat experience as a Marine over
2 in Iraq previously with him, and we would just have casual
3 conversations about combat, and I remember on one particular
4 occasion, he made a comment that, you know, people, people
5 here, they just don't know what it's like to be in combat.

6 He didn't necessarily say he was in combat, but
7 that's -- he was saying it -- he didn't say that he was in
8 combat, but he said in a manner that somebody who was in
9 combat, just saying, you know, that people around here, you
10 know, people just don't know what it's like.

11 Q. How did he describe -- talking about his job as a police
12 officer, how did he describe his performance as a cop?

13 A. We didn't talk about his performance as a police officer
14 that much. I mean, the couple times we did talk about it, I
15 remember, vaguely remember one conversation where I think he
16 said that he, he hasn't written many tickets in the year, maybe
17 one ticket, but, I mean, I could be wrong on that.

18 But there was another time -- the only other time we
19 really talked about his, his job that -- he said that he felt
20 that his job was out to get him, that there was a conspiracy
21 against him.

22 And then he mentioned one incident one time when I
23 believe it was in the City of Fairfax that he was stopped for a
24 moving violation, and he did not identify himself as a police
25 officer, and he told me that because of the anti-Semitic bumper

Sullivan - Direct

200

1 stickers on his car, like, he didn't really know how the cop
2 would react to that. I believe he also said that he was
3 supposed to be on duty then anyway, so he didn't want to -- he
4 didn't want his job to find out.

5 Q. And how would his job find out?

6 A. Actually, I retract that. He didn't tell me -- he didn't
7 tell me that he didn't want his job to find out. He just told
8 me that he was supposed to be on duty at the time.

9 MR. KROMBERG: Your Honor, at this point, I'd like to
10 read into evidence Stipulation No. 27 between the parties.

11 THE COURT: All right.

12 MR. KROMBERG: That the United States and the
13 defendant hereby stipulate and agree that Government Exhibit
14 11-500 is an authentic copy of the traffic ticket received by
15 defendant Nicholas Young on March 28, 2011.

16 And we'd like to move into evidence Government
17 Exhibit 11-500, which is the traffic ticket from March 28,
18 2011.

19 THE COURT: Any objection?

20 MS. MORENO: No objection.

21 MR. SMITH: No.

22 THE COURT: All right, it's in.

23 MR. KROMBERG: Thank you, Your Honor.

24 (Government's Exhibit No. 11-500 was received in
25 evidence.)

Sullivan - Direct

201

1 THE COURT: Are you publishing that or not?

2 MR. KROMBERG: No.

3 THE COURT: All right.

4 MR. KROMBERG: The jury can look at it. It's just
5 the traffic ticket. People have seen traffic tickets.

6 If I could have just one moment?

7 Q. So if I can direct your attention to your notes from
8 April 1, 2011? I'm referring to the incident about the traffic
9 ticket.

10 A. Yes, sir.

11 Q. Did you see in the notes where you talked -- where you
12 wrote down that he was worried that the police officer who
13 pulled him over would call his police department? In the
14 notes, it's in the part about after the meal at Chili's
15 concluded.

16 A. Yes, sir. April 1, you said, sir?

17 Q. April 1.

18 A. Okay.

19 Q. Do you see the part about the meal at Chili's?

20 A. Yes, sir.

21 Q. Okay. And then your reference to the police officer
22 pulled him over?

23 A. Yes, sir.

24 Q. Okay. Was there -- did Mr. Young express a concern --
25 what, if any, concern did Mr. Young express about him -- the

Sullivan - Direct

202

1 police officer calling Metro to find out if he, he was really a
2 police officer?

3 A. I don't remember the details. It just said that Mr. Young
4 was worried that --

5 MS. MORENO: Objection, Your Honor. Improper. Is
6 his recollection refreshed? He's reading from his notes?

7 THE COURT: Yeah, I mean, again, if the witness
8 cannot remember and has to look at the notes -- do the notes
9 refresh your memory as to what happened?

10 THE WITNESS: I don't remember talking about that.

11 THE COURT: All right.

12 BY MR. KROMBERG:

13 Q. Okay. Well, then -- so just looking at your notes from
14 that particular page, were these the notes that you wrote at
15 the time that you did remember?

16 A. Yes, sir.

17 MR. KROMBERG: Okay. Well, then in that case, Judge,
18 we're going to move this page in as the past recollection
19 recorded.

20 MS. MORENO: Objection. There are a number of items
21 on this page, Your Honor.

22 THE COURT: That's the problem. I'll have you redact
23 the page so just this relevant answer can be there. Why don't
24 you read that answer then in right now for the record so the
25 jury has context.

Sullivan - Direct

203

1 MR. KROMBERG: Okay.

2 THE COURT: And what exhibit number are you putting
3 on that then?

4 MR. KROMBERG: This is 11-202. Let's make it 11-202A
5 because 11-202 is the notes as a whole.

6 THE COURT: Well, the notes as a whole will not be
7 going in.

8 MR. KROMBERG: Right. So 11-202A.

9 THE COURT: All right. You will need to make sure
10 that's done at lunchtime --

11 MR. KROMBERG: Yes, ma'am.

12 THE COURT: -- so we can get it in the record, all
13 right?

14 MR. KROMBERG: Yes, ma'am.

15 THE COURT: That will be allowed in.

16 (Government's Exhibit No. 11-202A was marked and
17 received in evidence.)

18 MR. KROMBERG: And if I may read that portion of the
19 notes --

20 THE COURT: No, let the witness do it.

21 MR. KROMBERG: Okay.

22 THE WITNESS: I wrote that SD, that is, Mr. Young,
23 was worried that the police officer who pulled him, SD,
24 Mr. Young, over will call his police department.

25 BY MR. KROMBERG:

Sullivan - Direct

204

1 Q. Keep going.

2 A. "SD stated that some officers are required to report to,
3 quote, roll call, where others are supposed to report directly
4 to the Metro station. SD stated that on the day he was
5 supposed to report directly to a Metro station, SD stated that
6 he was late and had already reported over his radio that he,
7 SD, was on duty at the Metro station. SD was concerned that if
8 he, SD, told the police officer that he too was an officer,
9 his, SD, police department would find out and make an inquiry
10 as to why SD had reported for duty yet he, SD, was stopped on a
11 traffic stop in his POV, not in uniform, and had lied about his
12 duty status."

13 Q. That's it. Now, POV, privately owned vehicle?

14 A. Yes, sir.

15 MR. KROMBERG: If I may just a moment?

16 Thank you, Your Honor.

17 Q. Okay. Directing your attention to August 27, 2011, did
18 you have occasion to meet Mr. Young at the Islamic Heritage
19 Center?

20 A. August 27? Let me get back to that, sir.

21 You said August 27, sir?

22 Q. Correct. Well, let me do it this way: Was there a time
23 that he talked about going on -- that Mr. Young talked about
24 going on leave for an extended period?

25 A. Yes, sir.

Sullivan - Direct

205

1 Q. Okay. And can you tell us what you recall of that and
2 approximately when that occurred?

3 A. In August time frame. He, he did not give me many
4 details. He just had a conversation that, that he was going to
5 be going away again, and I believe that he talked about some
6 sort of a problem he was having with his police department over
7 leave, but he told me he was going to go away again and --

8 Q. Did he tell you where he was going?

9 A. No, he did not.

10 Q. Did you ask him where he was going?

11 A. No, I did not.

12 Q. Why not?

13 A. If he wanted me to know, he would have told me.

14 Q. So after that time, August 27, 2011, do you know -- do you
15 recall the next time you saw him? And if you can refer to your
16 notes, refer to your notes.

17 A. August 2011?

18 Q. In fact, let me ask you, do you -- can you take a look at
19 Government Exhibit 11-101? Now, 11-101 is a DVD. Is the DVD
20 in front of you?

21 A. Yes, sir.

22 Q. Okay. Are there your initials or your Khalil initials on
23 the DVD?

24 A. Yes, sir.

25 Q. And you listened to what's on that DVD?

Sullivan - Direct

206

1 A. Yes, sir.

2 Q. Can you tell us what's on that DVD?

3 A. It says recording of my interactions on that day.

4 Q. On January 26, 2012?

5 A. Yes, sir.

6 Q. Okay. How did it happen that you came to be recording him
7 on this day, January 26, 2012?

8 A. This is the point in the investigation where I was
9 directed by the case agents to start recording my interactions.

10 Q. Your interactions with who?

11 A. With mostly Liban Mohamed. With anybody at that point.
12 Liban Mohamed. We were moving into sort of the criminal phase.

13 Q. The criminal phase with respect to who?

14 A. Liban Mohamed.

15 Q. And that would -- tell us again what the criminal case
16 against Liban Mohamed was.

17 A. This was the point where Mr. Mohamed was actively
18 recruiting me to collect weapons -- I'm sorry, collect
19 equipment to go over and fight and train Al-Shabaab in Somalia.

20 Q. Okay. So is Government Exhibit 11-101 an accurate
21 depiction of what happened at that meeting on January 26, 2012,
22 with Mr. Young, Mr. Al-Barmawi, and Liban Mohamed?

23 A. Yes, sir.

24 MR. KROMBERG: The government moves into evidence
25 11-101. We do not plan to play it, Judge, but if the jury

Sullivan - Direct

207

1 wants to listen to it later --

2 THE COURT: I don't do it that way. If, if you're
3 putting in an audiotape, it gets played during the trial.

4 MR. KROMBERG: Okay. These are long. These are --
5 they're long, and the point of this is nothing happened, Judge.
6 That's what we're trying to get across. There's nothing there.

7 MS. MORENO: Judge --

8 THE COURT: Wait a minute, wait a minute, wait a
9 minute. I don't think it's correct to pile a ton of stuff on a
10 jury without it having been adequately discussed, explained,
11 and played for them in open court.

12 MR. KROMBERG: Okay.

13 THE COURT: All right? So if it has no value, then
14 there's no sense putting it in the record.

15 MR. KROMBERG: Okay.

16 THE COURT: All right? So 101 is not in at this
17 point.

18 BY MR. KROMBERG:

19 Q. Take a look at 11-102.

20 A. Yes, sir.

21 Q. Is that a recording that you put your initials on?

22 A. Yes, sir.

23 Q. When was that meeting?

24 A. That was on February 11, 2012.

25 Q. And was that when you went to see the movie *The Grey*?

Sullivan - Direct

208

1 A. Let me get to that date, sir. I believe so, though.

2 February 11, yes, sir, we saw *The Grey*.

3 Q. Did you listen to what was on there?

4 A. Yes, sir.

5 Q. Is it an accurate depiction of what happened on that
6 meeting?

7 A. Yes, sir.

8 MR. KROMBERG: We're going to leave it not moved into
9 evidence again, but it exists if the defense wants to use it.

10 THE COURT: All right.

11 BY MR. KROMBERG:

12 Q. Take a look at Government Exhibit 11-103.

13 A. Yes, sir.

14 Q. What is that?

15 A. This is also a recording --

16 MS. MORENO: Excuse me, may we approach?

17 THE COURT: Yes.

18 (Bench conference on the record.)

19 THE COURT: All right, what's the point of talking
20 about tapes if they don't have anything in them?

21 MR. KROMBERG: So my -- when I said there's nothing
22 in them, I meant nothing about entrapment, nothing about
23 inducement. They're just two people talking about normal
24 things.

25 If the defense is going to say that Khalil

Sullivan - Direct

209

1 radicalized this guy, here we have five tapes of their
2 meetings. We don't have any other tapes, but these are the
3 five we have, and there's nothing in them about radicalization,
4 about entrapment, but it's the -- we're trying to prove
5 something that did not happen, and here are tapes that show
6 that at least these five meetings, which are the only tapes we
7 have, nothing happened.

8 MS. MORENO: I'm utterly confused, Your Honor. It's
9 never been the defense position that Khalil radicalized our
10 client. What is he talking about?

11 THE COURT: Well --

12 MS. MORENO: These tapes, these recordings are
13 several hours long, a number of them.

14 MR. SMITH: Each.

15 MS. MORENO: Each. So what are we doing here? I'm
16 just lost, Judge.

17 THE COURT: All right, I think this line of
18 questioning isn't helping in any respect. It's only going to
19 have the jury scratching their heads, wondering what's going on
20 here. Let's move on.

21 MR. KROMBERG: That's fine.

22 THE COURT: If in the defendant's case they get
23 closer to this kind of issue, it may have to be revisited in
24 the rebuttal situation.

25 MR. KROMBERG: That's fine. I'm surprised to hear

Sullivan - Direct

210

1 what Ms. Moreno said, that they're not saying --

2 THE COURT: I'm really surprised, too, because I
3 recall when I was giving the jury the summary of the
4 defendant's theory of the case, you-all asked me to add Khalil,
5 so there was that sentence in my opening description of the
6 case, but it didn't use the word "radicalized."

7 MS. MORENO: Radicalized --

8 THE COURT: All right.

9 MS. MORENO: -- which is a different theory, Your
10 Honor.

11 THE COURT: Well, the inducement is somewhat there.
12 All right, at this point, it's not an issue.

13 MS. MORENO: Okay.

14 MR. KROMBERG: Thank you.

15 THE COURT: Thank you.

16 MS. MORENO: Thank you.

17 (End of bench conference.)

18 BY MR. KROMBERG:

19 Q. So I'd like to turn your attention now to the next meeting
20 you had with Mr. Young, which was on February 26, 2012?

21 A. Yes, sir.

22 Q. And you were wearing a recording on that meeting as well,
23 correct?

24 A. Yes, sir.

25 Q. During that meeting, where were you, do you recall?

Sullivan - Direct

211

1 A. That time, we were at the Bonefish Grill in Greenbriar
2 Shopping Center.

3 Q. And you went to see a movie as well?

4 A. Yes, sir.

5 Q. *Act of Valor*?

6 A. Yes, sir.

7 Q. Okay. So what conversation, if any, during that meeting
8 was there about Amine El-Khalifi?

9 A. This was after Amine was arrested. He was arrested for,
10 for going to the Capitol with a suicide vest.

11 We talked about his arrest. During this time, I
12 brought up the -- you know, based on, you know, previous
13 conversations, I brought up the topic for us about trying to
14 uncover who the informant was, you know, trying to figure out
15 who exactly set Mr. Khalifi up. I was the one that initiated
16 that conversation.

17 We talked about.

18 Q. Why did you do that?

19 A. Well, based on previous conversations that I had with
20 numerous people, that seems to be a common thread of like
21 that's what people would want to do during this conversation,
22 and I was trying to redirect the attention from myself. It's
23 almost like, you know, if you bring it up, then maybe people
24 won't look at you.

25 Q. Well, in fact, you weren't the informant on the Khalifi

Sullivan - Direct

212

1 case, were you?

2 A. Not really.

3 Q. Well, you weren't the person who was involved with the
4 plot?

5 A. No.

6 Q. All right. So what did Nick Young tell you would likely
7 happen to you as a result of your involvement with Mr. Khalifi?

8 A. We talked about, both talked about that the FBI would
9 mostly likely come talk to me based on my, based on my
10 communications and my interactions with Amine. He told me
11 that -- he just gave me some advice that, you know, when I'm
12 talking to them, to keep it short, simple, and sweet; and he
13 also told me that I really wouldn't have to answer questions, I
14 don't have to answer questions, opinion-based questions or
15 lifestyle questions, but --

16 Q. What did Mr. Young -- what did Mr. Young say that was a
17 basis for why he believed this would happen to you now?

18 A. I believe it's because he said that this is what happened
19 to him when Zachary Chesser was arrested.

20 Q. Could you take a look at Government Exhibit 9-101, which
21 is a photo?

22 THE COURT: Any objection to 101?

23 MS. MORENO: No objection.

24 THE COURT: All right, it's in.

25 (Government's Exhibit No. 9-101 was received in

Sullivan - Direct

213

1 evidence.)

2 BY MR. KROMBERG:

3 Q. Zachary Chesser, correct?

4 A. Yes, sir.

5 Q. And that's who Mr. Young was talking about?

6 A. Let me refresh my recollection, sir. He -- I remember he
7 had, he had these conversations. He talked to me numerous
8 times about being interviewed because of his interaction with
9 Zachary Chesser. I have to see if it was on this particular
10 date.

11 Q. Well, okay. It doesn't even matter for our purposes here.

12 A. Okay.

13 Q. So he gave you advice about speaking to the FBI. That's
14 fine. Was that meeting recorded?

15 A. Yes, sir, it was.

16 Q. Okay. Did you have any other meetings with him? April
17 27, 2012?

18 A. Yes. But also for that meeting, sir --

19 Q. Please.

20 A. On that particular meeting, you asked about other
21 conversations we had. We did, we did talk about the
22 circumstances of which Mr. Khalifi, which Amine was arrested.
23 During that time -- because we talked about him being a police
24 officer and me being in the military, and I, I told him that it
25 was my opinion that if Amine was not truly set up, if he wasn't

Sullivan - Direct

214

1 truly set up, if he actually did some of those things, then I
2 think what Amine did was wrong.

3 So I, I denounced what Amine did, and I gave -- and I
4 said because, you know, if he went through with that, if he
5 went through with that plot, then he wouldn't have killed any
6 politicians or anything like that. He would have ended up
7 killing, like, a police officer like him that's just sitting
8 there or some tourist or something like that.

9 So I, you know, I denounced -- and I said if he
10 wasn't set up, if he actually did it, then I -- then what he
11 did was wrong.

12 Q. And what did Mr. Young say in response?

13 A. I don't, I don't remember exactly what his response was,
14 but Mr. Young never verbally supported what Amine did.

15 Q. Okay. So the next time you saw him was April 27, 2012?
16 Take a look at Government Exhibit 11-105, the DVD.

17 A. Yes. Yes, sir, April 27.

18 Q. So you -- this, this was the point where you were
19 recording all meetings?

20 A. Yes.

21 Q. So that was -- so you know that was your last meeting with
22 him?

23 A. Yes.

24 Q. Okay. Did you ever see him again after April 27, 2012?

25 A. I don't, I don't recall seeing him.

Sullivan - Direct

215

1 Q. Please look at Government Exhibit 11-220.

2 THE COURT: What is that, Mr. Kromberg?

3 MR. KROMBERG: That's a text message, or it's an
4 e-mail containing a text message.

5 THE COURT: Is there any objection to that?

6 MS. MORENO: No objection.

7 THE COURT: All right, 11-220 is in.

8 (Government's Exhibit No. 11-220 was received in
9 evidence.)

10 BY MR. KROMBERG:

11 Q. You can look at it on the screen if it's easier.

12 A. Yes, sir.

13 Q. Do you recognize that?

14 A. Yes, sir.

15 Q. So what, what is that?

16 A. That is a, that is a message that was, that was sent to me
17 from, from Nick that I forwarded on to the FBI, and at this
18 particular -- he just -- it's just reaching out to me because
19 he hasn't talked to me in a while, to --

20 Q. Can you read that? I don't think that the jury can really
21 read that.

22 A. Okay. It said, "Salam Alikom akhí," which is, that's a
23 traditional Islam greeting. "Its your brother in Islam Nick.
24 I hope everything is going okay. You dropped off the grid,
25 haven't seen you forever. I'll admit I have done the same

Sullivan - Direct

216

1 thing a few times, about a year ago there was a 3 or 4 month
2 period when the only time I left the house was for jumma" --
3 that's prayer services -- "but I was in a bad place then. Hope
4 you are well. Listen man, I got weekends off nowadays. Whats
5 the good word? Hit me up. My phone fried a number of months
6 back but I still have the same number. 571-236-8195. Lost
7 everyones number. Don't be a stranger. Lets meet up soon.
8 Nick."

9 Q. And what did you do in response to receiving that message?

10 A. I don't believe I responded to him.

11 Q. Now, this -- what's on the screen, that is not -- correct
12 me if I'm wrong. That's what you sent to the FBI after you got
13 the text message? That's cut and pasted, or was that to you
14 directly?

15 A. I think it was a -- no, this was an e-mail. It wasn't a
16 text message.

17 Q. Okay. Now, why did you have so little contact with
18 Mr. Young after April 2012?

19 A. Because I was engaged heavily with Liban Mohamed and I
20 believe there was like six or seven other individuals that were
21 supposed to be traveling with us, so at that point --

22 Q. Traveling to Somalia?

23 A. Yes, to join Al-Shabaab.

24 Mr. Young was not part of that. We were not trying
25 to make him part of that, and I was directed by, by the FBI to

Sullivan - Direct

217

1 not have contact with Mr. Young.

2 Q. Okay. So in the course of your relationship with -- when
3 you knew him, between December 2010-April 2012, what books or
4 written materials did you give Mr. Young about Islam?

5 A. I don't recall giving him anything.

6 Q. What videos or music did you give him about Islam?

7 A. I don't recall -- I don't recall giving him anything, and
8 I certainly wouldn't have given him anything inflammatory.

9 Q. What criminal activity did you ever ask him to engage in?

10 A. None. I actually refrained from trying to engage him in
11 any kind of criminal activity.

12 Q. Between you and Mr. Young -- between your role of Khalil
13 Sullivan and Mr. Young, who was supposed to know more about
14 Islam?

15 A. I can't speak to the exact knowledge of Islam that
16 Mr. Young had, but I will say that Mr. Young was a Muslim much
17 longer than I and has already -- and, and there was one point
18 that Saleh told me that he's impressed with the dedication, you
19 know, of Nick as a Muslim even though he doesn't have a lot of
20 time.

21 Q. Saleh Al-Barmawi?

22 A. Yes, sir. Yes, sir. But I can't, I can't really speak to
23 his, Mr. Young's level of education as far as Islam, but he
24 said he wasn't Muslim much longer than, than I.

25 Q. What, if anything, did you ever tell him to do differently

Sullivan - Direct

218

1 to be a better Muslim?

2 A. I can't recall having any conversations like that.

3 Q. Of all the people in the circle, the circles around

4 Mr. Young, who was the leader in all things relating to Islam?

5 A. There were -- the circles overlapped. You had sort of

6 Liban Mohamed's circle and then Saleh Al-Barmawi's, but in the

7 Saleh Al-Barmawi's circle, which Mr. Young was more rooted in,

8 Saleh Al-Barmawi was, was the leader. In fact --

9 Q. And how did -- how was he treated by others when you saw
10 that -- him there with Mr. Young?

11 A. He was treated with respect. I mean, there were times
12 when I've been with people where they actually called Saleh
13 "sheikh." Saleh would give classes to people. He would always
14 be the one that sort of -- when I was around, people would go
15 to him for advice. People would go to him.

16 There was one particular time that Saleh actually
17 gave me what's called a fatwa to get out of the military.
18 Again, fatwa is an Islamic ruling.

19 Saleh frequently taught classes to people. He would
20 have study sessions where he would always be the one that is
21 the leader, and people looked up to him. And there was one
22 time that -- and Saleh would also correct people. I remember
23 there was one occasion where we were just talking around, we
24 were talking about Hitler, and Mr. Young, you know, we were
25 talking about Hitler and talking about other Jews.

Sullivan - Direct

219

1 MS. MORENO: Objection.

2 THE COURT: Overruled.

3 THE WITNESS: Okay. And where Mr. Young mentioned
4 something. As I said, he said this -- he was sort of laughing
5 when he said it, but he mentioned that he was going to pray for
6 the soul of Hitler. That's when Saleh came down and said: No,
7 you can't pray for the soul of somebody who's a disbeliever.

8 So he, Saleh would correct you. I mean, there were
9 times that Saleh would correct me on the proper hand to eat
10 with. So he was definitely the leader of that, the people.

11 BY MR. KROMBERG:

12 Q. Do you remember a movie at Saleh Al-Barmawi's house, *Lion*
13 *of the Desert*?

14 A. Yes, sir.

15 Q. So can you tell the jurors about what happened at that --
16 what that evening was?

17 A. That was a movie of the *Lion of the Desert*. It was at
18 Saleh Al-Barmawi's house, where Saleh invited a bunch of people
19 over. The movie was about, I believe it was about the Libyan
20 jihad against the Italians.

21 Q. In the 1920s and '30s?

22 A. Yes. The 1920s --

23 MS. MORENO: Objection.

24 THE COURT: What's the basis for the objection?

25 MS. MORENO: Mr. Kromberg is testifying.

Sullivan - Direct

220

1 THE COURT: Sustained.

2 THE WITNESS: Okay.

3 BY MR. KROMBERG:

4 Q. When was the Italian jihad against -- was the Libyan jihad
5 against the Italians?

6 A. It was based on, like, the early 1900s.

7 Q. Okay.

8 A. Early 1900s, that's what I could recall about the movie.
9 I believe it was the Libyans versus the Italians.

10 During the course of the movie, as I said, it was at
11 Saleh's house. He was the one that invited people over. Saleh
12 Al-Barmawi at times throughout the movie will point out
13 significant, significant events that happened in the movie.
14 Like, there was a couple times where somebody was talking about
15 jihad, about his obligation. Saleh actually got up and
16 cheered. There was one point in the movie where a woman's
17 husband was killed as a martyr, and I don't remember who in the
18 audience asked, but they turned to Saleh and said: Why, you
19 know, why is she crying? Because her husband is now a martyr.

20 Saleh said: Well, she's still missing -- you know,
21 she's still missing her husband.

22 Because previously in conversations, I believe, I
23 believe Mr. Young was there on that, where talking about jihad,
24 Saleh mentioned that jihad would solve a lot of our problems.

25 MR. KROMBERG: Okay. Thank you. Nothing further for

Sullivan - Cross

221

1 the witness at this time.

2 THE COURT: All right.

3 MR. KROMBERG: Please answer defense's questions.

4 THE WITNESS: Yes, sir. Thank you.

5 CROSS-EXAMINATION

6 BY MS. MORENO:

7 Q. Good morning, Mr. Sullivan.

8 A. Good morning, ma'am.

9 Q. Excuse me, I've had terrible luck; I broke my glasses.

10 A. No problem.

11 Q. Sometimes they'll fall. Pardon me.

12 Now, Mr. Sullivan, you met Nick Young in December of
13 2010?

14 A. Yes, ma'am.

15 Q. And your first report on Nick Young was in December 2010?

16 A. Yes, ma'am.

17 Q. And you met with Nick Young from December 2010 through
18 April 2012?

19 A. On and off, yes, I believe that --

20 Q. And the times that you met with him, you sometimes just
21 reported on him? You issued reports, correct?

22 A. I would, I would report on whoever, whoever that I really
23 met.

24 Q. And that would include Nick Young?

25 A. Yes.

Sullivan - Cross

222

1 Q. Right. And so that big binder of notes that you have in
2 front of you --

3 A. Yes, ma'am.

4 Q. -- are notes and your reports about Nick Young?

5 A. Yes, ma'am.

6 Q. And I think it's the last four or five meetings with --
7 where you met with Nick Young, you recorded those meetings?

8 A. Yes, ma'am.

9 Q. Okay. Now, so is it fair to say that you met with him
10 about 20 times during that period of time?

11 A. That sounds about right. That sounds about right.

12 Q. And in those meetings, you and Mr. Young, I'm not talking
13 about all these other people you've been talking about --

14 A. Okay.

15 Q. -- just your discussions with Mr. Young --

16 A. Yes, ma'am.

17 Q. -- you talked about many things, right?

18 A. Yes, ma'am.

19 Q. And you talked about many things. You were in an
20 undercover capacity.

21 A. Yes, ma'am.

22 Q. Right. And the entire time, the entire relationship with
23 Mr. Young, he didn't know your true name, right?

24 A. No, he did not, ma'am.

25 Q. He didn't know who you were, correct?

Sullivan - Cross

223

1 A. Know who fake me is or real me?

2 Q. Who you really were.

3 A. Oh, no, he did not.

4 Q. Right. And so all those various times that he was talking
5 about surveillance of Muslims and mosques, he had some of those
6 conversations with you, correct?

7 A. Yes, yes.

8 Q. You were actually surveilling Muslims and mosques,
9 correct?

10 A. No. I was not surveilling Muslims and mosques. I was
11 going in tasked with obtaining information on very specific
12 people that had already been predicated themselves to be prone
13 to violence.

14 Q. You were praying in mosques with some of the subjects of
15 your investigation, correct?

16 A. Yes, yes.

17 Q. You attended prayers with those people, correct?

18 A. Yes.

19 Q. And you attended prayers with Mr. Young.

20 A. Yes, ma'am.

21 Q. Right? And all the time you were doing that, you were
22 working in an undercover capacity?

23 A. Yes, ma'am.

24 Q. And while you were -- when you were outside of the mosque,
25 you had sort of a social relationship with Mr. Young, correct?

Sullivan - Cross

224

1 A. Yes, ma'am.

2 Q. And throughout that social relationship, you, of course,
3 were deceiving Mr. Young on who you were, correct?

4 A. Yes, ma'am.

5 Q. And what your purpose was, in fact, in talking to
6 Mr. Young, right?

7 A. Yes, ma'am.

8 Q. Because after you would meet with Mr. Young and others,
9 you would go back to your car or your office and type up the
10 notes of the conversations, correct?

11 A. Yes.

12 Q. All right. And you had, you had -- you talked a little
13 bit about this, but you talked about many things with
14 Mr. Young, right? And when you would, when you would make
15 these reports -- this is before the recording.

16 A. Yes, ma'am.

17 Q. You would be in touch, of course, with -- you would be in
18 touch, of course, with your superiors, correct, after these
19 meetings?

20 A. You mean would I establish -- would I have contact with
21 them?

22 Q. Right.

23 A. Yes.

24 Q. Yes. And you would share your reports with your
25 superiors, correct?

Sullivan - Cross

225

1 A. Are you talking immediately afterwards?

2 Q. At any time.

3 A. The process in which, how it normally happened, I would
4 have --

5 THE COURT: Mr. Sullivan, stay closer to the
6 microphone and speak up, please.

7 THE WITNESS: Sorry. The process in which it
8 normally happened is I would have my meeting with whoever.
9 Afterwards, sometimes, sometimes I would physically meet with
10 somebody, but a lot of times, it was just phone conversation
11 with just a, hey, I'm okay, done for the day.

12 There was a -- it wasn't really sharing -- like, if
13 there was anything significant that happened during those
14 times, then, then I would relay that information, like,
15 verbally, right then and there if there was something
16 significant, but they wouldn't -- then I would just go write my
17 report, and I would give it to them when I finished my report.
18 That's the process in which, which it happened.

19 Q. I understand. You would also get direction from your
20 superiors, correct, in how you were conducting your
21 investigation?

22 A. Yes. Yeah, they -- yeah. They're the ones that dictated
23 the targets are who we went after. Yes, they dictated
24 everything. I was just an investigative technique.

25 Q. Did you -- you talked about this person, Amine Khalifi.

Sullivan - Cross

226

1 A. Yes, ma'am.

2 Q. Yes. And you, you said that Mr. Young was not friends and
3 not close to Mr. Khalifi in direct.

4 A. Yes, yes.

5 Q. Okay. And, in fact, you introduced Mr. Khalifi to Nick
6 Young.

7 A. It wasn't set up me to introduce Nick to Amine Khalifi.
8 It just happened by chance. He said: We have these circles.
9 And even the first time that we met was after a class and
10 prayer services, where there was just a group of people that
11 went out to the restaurant afterwards.

12 Q. And you introduced Mr. Khalifi to Nick Young?

13 A. I don't believe I was the one that physically introduced
14 him. I mean, he was, he was with me, and I went out to eat
15 with somebody who was with Amine Khalifi, and then we sort of
16 met each other that way. I mean, I don't think I was the one
17 that went up and said: Hey, Amine, this is, you know, this is
18 Nick, you guys meet each other.

19 I don't -- like I said, I don't know exactly how that
20 meeting went, but yes, he was with me, and I was the one that
21 said we're going to go to this location right here, and that's
22 where Amine was, but it wasn't the intention or my direction to
23 get these two together.

24 Q. But you understood that Mr. Young didn't know Mr. Khalifi
25 before that?

Sullivan - Cross

227

1 A. It was my -- I don't think that he -- he definitely wasn't
2 friends with him, but I don't know if he's ever physically seen
3 him before, anything like that. I can't recall that. I don't
4 believe so.

5 Q. You also spoke about Liban Mohamed was suspicious of
6 Mr. Young.

7 A. Yes.

8 Q. Right? And you talked about this whole Somalia --

9 A. Yes, ma'am.

10 Q. -- issue.

11 And Mr. Young didn't have anything to do with that,
12 right?

13 A. No, nothing.

14 Q. You talked about, you talked about -- just a moment,
15 please.

16 Now, in, in the relationships and the discussions
17 that you had with Nick Young --

18 A. Yes, ma'am.

19 Q. -- you told him many things that weren't true, right?

20 A. Yes.

21 Q. Right. And you told him that you kept from the Marine
22 Corps that you were a Muslim because it would endanger your Top
23 Secret clearance.

24 A. Yes.

25 Q. Right. And that wasn't true, right?

Sullivan - Cross

228

1 A. No.

2 Q. You also told him when they talked about Israel and
3 Palestine, you brought up that you hated the British --

4 A. Yes.

5 Q. -- because of what they did to Ireland.

6 A. Yes.

7 Q. Right. You compared that situation with Israel and
8 Palestine in that, in that conversation, right?

9 A. I don't recall doing that, but if it's written in my
10 reports, then it happened.

11 Q. Now, in December of 2010, right from the very beginning,
12 you started talking to -- you indicated in your reports that
13 you were speaking to Nick Young as old friends because you had
14 bonded almost immediately; isn't that right?

15 A. Yes. And that actually was not by design at all. It
16 just -- him and I just -- he wasn't even the target that I was
17 going there to meet. It's just him and I generally just seemed
18 to have good conversations and get along.

19 Q. You bonded and spoke like old friends from the very
20 beginning, right?

21 A. Yeah. We were very comfortable.

22 Q. And that's because you were talking to him about the
23 military, right?

24 A. Yes.

25 Q. And talking to him about subjects that were of interest to

Sullivan - Cross

229

1 him and that were common to him, correct?

2 A. Well, it was -- I don't know what, what topics you're
3 referring to.

4 Q. Well, the topics that I mentioned, the military, right?

5 A. Yes, yes. The military, yes.

6 Q. And about Islam, about the faith, right? You guys talked
7 about religion some?

8 A. Yeah, some. I mean, everybody in the room was Muslim, so
9 that was, I mean, that was just a common, a common bond with
10 everybody in that room.

11 Q. Including you, sir? Are you a Muslim?

12 A. Am I --

13 MR. KROMBERG: Objection, Judge.

14 THE COURT: Wait, wait, wait. Only the persona can
15 be discussed.

16 MS. MORENO: Well, may we approach, Your Honor?

17 THE COURT: Yes.

18 (Bench conference on the record.)

19 THE COURT: Where's your client?

20 MR. SMITH: I just don't know if it's sensitive to
21 the government to discuss this right here with him there. I
22 didn't know if that's right.

23 THE COURT: All right, we'll waive this one time.
24 Wait, switch positions.

25 MS. MORENO: I'm sorry.

Sullivan - Cross

230

1 THE COURT: All right.

2 MS. MORENO: Your Honor?

3 THE COURT: Yes.

4 MS. MORENO: In direct, I objected with the way
5 Mr. Kromberg was examining the witness about some issues
6 regarding Islam, and you overruled my objection, and you
7 indicated as a member of the religion, referring to
8 Mr. Sullivan, he could properly talk about that.

9 MR. KROMBERG: That was with regards to the hajj,
10 what the hajj was.

11 MS. MORENO: Yeah, right. But the impression that
12 the jury has is that he's a Muslim, and I don't think that's
13 appropriate unless he is.

14 THE COURT: No, no, no. I think he can clearly, he
15 can clearly testify to the persona that he was presenting.
16 Obviously, he's presented a persona of being a Muslim.

17 Anybody who knows anything about Islam knows what
18 hajj is. I mean, you can ask him how he knows about hajj,
19 whether the agents talked to him or he's done research, but you
20 cannot ask him anything about his personal actual identity,
21 which would include where he went to school, where he's really
22 from, although he's clearly got a Boston accent, or his
23 religion.

24 MS. MORENO: Okay.

25 MR. KROMBERG: Thank you, Your Honor.

Sullivan - Cross

231

1 (End of bench conference.)

2 BY MS. MORENO:

3 Q. By the way, you spoke about Zachary Chesser in direct.

4 A. Yes, ma'am.

5 Q. Yes. And you know that Mr. Young didn't really know
6 Zachary Chesser, correct?

7 A. Yeah. I think he told me that he might have had, like,
8 one phone contact -- one, one phone call with him. He said he
9 wasn't very, very close to him. He just afterwards, just
10 showing support at court proceedings and support for his wife.
11 But again, he didn't say that he supported, you know, his
12 action.

13 THE COURT: Mr. Sullivan, keep your voice up again.

14 THE WITNESS: He said that, from what I gather from
15 that, he spoke to him, I believe he said one time, so he didn't
16 have much of an interaction with him. It was more so just
17 showing support for him post-arrest.

18 BY MS. MORENO:

19 Q. And his family.

20 A. Yes, post-arrest.

21 Q. Now, you talked about the Serbian Kosovo conflict.

22 A. Yes.

23 Q. And you indicated that Kosovo was such a clear-cut cause
24 for jihad. That was something you brought up, correct?

25 A. Yes.

Sullivan - Cross

232

1 Q. In conversations.

2 A. Yes.

3 Q. Mr. Young -- you, you talked about the Marine Corps.

4 A. Yes.

5 Q. And your issues with the Marine Corps with Mr. Young,
6 correct?

7 A. Yes.

8 Q. And Mr. Young actually tried to persuade you to stay in
9 the Marine Corps at times?

10 A. I don't recall that. I recall him more trying to persuade
11 me to get out and apply to some police departments, if my --

12 Q. He also told you about -- he tried to encourage you to
13 join law enforcement, right?

14 A. Yeah. That's -- yeah. I don't, I don't recall him trying
15 to persuade me to stay in the Marine Corps. I thought it was
16 that I should apply to some police departments when I got out.

17 Q. You had political discussions about Egypt and the Arab
18 Spring. Do you recall those?

19 A. Yes, sir -- yes, ma'am, sorry.

20 Q. And Mr. Young spoke negatively about President Mubarak,
21 correct?

22 A. Yes, he did.

23 Q. Mubarak who was ultimately ousted from power, right?

24 A. Yes.

25 Q. You told Mr. Young that you wanted to get out of the

Sullivan - Cross

233

1 Marine Corps because Barack Obama was your commander in chief.

2 A. Yes.

3 Q. Do you remember telling him that?

4 A. Yes.

5 Q. Was that said in Mr. Young's presence?

6 A. That what?

7 Q. That you wanted to get out of the Marine Corps because

8 Barack Obama was the commander-in-chief?

9 A. If you, if you can point me to what day you're talking
10 about? That statement, do you want to know the context behind
11 it or just yes or no?

12 Q. February 28, 2011, I believe.

13 A. Okay.

14 Q. It will be around page 4.

15 A. February 28?

16 Q. 2/28/11?

17 A. I don't have that.

18 Okay. You said page 4, ma'am?

19 Q. I think it's page 6 actually. We can move on, sir.

20 A. Okay. I see that. Yes, that's -- we, we had that
21 conversation. It was myself, Nick, and Saleh Al-Barmawi.
22 That -- that's when Al-Barmawi stated that I should get out of
23 the military and when -- that's when Nick agreed that Obama --
24 made a statement that Obama was a kufir, which is a
25 disbeliever.

Sullivan - Cross

234

1 Q. You had a conversation with Nick Young about issues with
2 enforcing unjust laws. Do you remember that?

3 A. Yes. I, I think I, I asked him if there was any kind of
4 conflict with his job as a police officer and sharia law, which
5 he said he hasn't run into any conflicts, and I believe that's
6 the time when he talked about me joining maybe the DEA or
7 something like that because that would be little -- that would
8 be less conflicting with sharia law.

9 Q. Mr. Kromberg focused you on this discussion about
10 attacking an FBI establishment, right?

11 A. Yes.

12 Q. Do you remember that?

13 A. Yes, ma'am.

14 Q. But in your notes, you, you didn't write that Nick Young
15 said that he wanted to do that.

16 A. No, he -- it's --

17 Q. Hold on. He didn't, he didn't say that, right?

18 A. No. He mentioned --

19 Q. That he wanted to do that.

20 A. No. He said that -- a lot of these conversations, I mean,
21 I will say that some of the conversations we had were
22 hypothetical. If, if he said that he wanted to, he was going
23 to, then he would have then been the target of investigation.

24 These are just conversations that just came up, which
25 is why I would engage sometimes, we would have to see if those

Sullivan - Cross

235

1 words are hypothetical or if those truly are plans.

2 Q. Right. And you didn't perceive them to be any kind of
3 plans?

4 A. I didn't, I didn't take -- the way he said it, we would
5 have hypothetical conversations like that. The way he said it,
6 I didn't take it as a plan, but what was a little alarming is
7 that he kind of went into a little bit of details of, like, how
8 he would do it if he was going to do it. I mean --

9 Q. He didn't say how he would do it. He talked
10 hypothetically about how someone could do it; isn't that right?

11 A. No. I mean, the one part when he talked about somebody
12 with his skills.

13 Q. No. So I refer you to your notes.

14 A. What date, what date is this?

15 Q. Okay. March 8, 2011.

16 A. March 8, okay.

17 Q. About four pages.

18 Now, you wrote these reports, right?

19 A. Yes, I did.

20 Q. And in these reports, you wanted to be accurate, correct?

21 A. Yes.

22 Q. Because that was --

23 A. I'm sorry.

24 Q. Excuse me. Because that was important, right?

25 A. Yes, absolutely.

Sullivan - Cross

236

1 Q. To have accurate information?

2 A. Yes, ma'am.

3 Q. And, of course, as an, as an FBI agent, you wanted to make
4 sure that if there was --

5 MR. KROMBERG: Objection, Judge.

6 THE COURT: Yes. He's not an FBI agent. He was
7 working for the FBI.

8 MS. MORENO: I'm sorry; my apologies.

9 Q. But you wanted to make sure that the information was
10 accurate, right?

11 A. Absolutely, yes.

12 Q. Because, because others were reviewing this information.

13 A. Yes.

14 Q. Right. And so it would have been important if, in fact,
15 Mr. Young said, "I'm going to attack a courthouse or an FBI
16 establishment." That would have been important?

17 A. He, he --

18 Q. That would have been important.

19 MR. KROMBERG: Objection, Judge. She should let the
20 witness answer the question.

21 THE COURT: The question is quite simple, and the
22 question is was it important, and the answer would be yes or
23 no.

24 THE WITNESS: Yes, it was important.

25 BY MS. MORENO:

Sullivan - Cross

237

1 Q. Right. And, in fact, in some of these reports, sometimes
2 you actually quote Mr. Young, correct? You put quotes around
3 what he said.

4 A. Yes.

5 Q. And in a lot of -- but most of it are your recollection of
6 what he had said, correct?

7 A. Yes.

8 Q. And you -- and in recalling what he had said, you really
9 wanted to make sure you got it right.

10 A. Yes.

11 Q. Yes. Okay. And so when you wrote this report --

12 A. You said March 8, ma'am?

13 Q. Excuse me, sir.

14 Sorry, I'm so sorry. It is March 12.

15 A. 12th, okay.

16 Q. Four pages in.

17 A. Okay. Okay.

18 Q. And you wrote that --

19 A. Sorry.

20 Q. Let me finish.

21 A. Sorry. Sorry about that.

22 Q. I'm sorry. "SD" is who?

23 A. Mr. Young.

24 Q. And that stands for, do you know?

25 A. That was his, the reporting code name.

Sullivan - Cross

238

1 Q. Stated that he despises the FBI and that someone with
2 skills could attack an FBI establishment. That's what you
3 wrote, right?

4 A. Yes. Yes, ma'am.

5 Q. And in that sentence, you didn't write that he said that,
6 correct, that he could do that?

7 A. Well, he did because he said that, that he could find out
8 where the JTTF was, so he did, he did implicate himself in
9 that. That's where he said, when he was talking about overall
10 his different skills, so if you're talking about somebody
11 attacking the JTTF and somebody doing this, yes, there were --
12 and sort of the general somebody with skills, somebody with
13 this, but he implicated himself. He said, "I could find" --
14 that he could find out what floor the JTTF was on.

15 Q. And he didn't tell you that he was going to be the one to
16 attack an establishment.

17 A. No, and I didn't say -- no, and I didn't take this as a
18 plan. This was more, like, hypothetically. This wasn't, I
19 mean, I didn't --

20 Q. Right.

21 A. I didn't gather from that that he was actively planning on
22 attacking the JTTF.

23 Q. And, in fact, Nick Young told you that while he distrusted
24 the FBI, that he respected the professionalism the agents
25 showed when they spoke to him? He told you that?

Sullivan - Cross

239

1 A. He -- yes. He was, he was able --

2 Q. Did he tell you that?

3 A. Yes. He was able to separate at times.

4 Q. And -- now, in March 28, 2011, you had known Mr. Young
5 about four months; is that right? About four?

6 A. About that, yes.

7 Q. And you were friendly with him.

8 A. Yes.

9 Q. Right? It's fair to say that he considered you a friend,
10 correct?

11 A. Yes.

12 Q. And his comments to you and his conversations to you would
13 have been unguarded, correct?

14 A. Yes.

15 Q. All right.

16 A. Yes.

17 Q. And he told you in March 28 of 2011 in a conversation that
18 he wanted to help Muslims as much as he could without doing
19 anything criminal and losing his job. He told you that.

20 A. Yes, he did.

21 Q. And in a private conversation, right?

22 A. I remember him saying that. I don't know if it was
23 private. I don't know if there was other people present.

24 Q. But he told that to you.

25 A. Yes, he did, ma'am.

Sullivan - Cross

240

1 MS. MORENO: May I have a moment, Your Honor?

2 THE COURT: Yes, ma'am.

3 BY MS. MORENO:

4 Q. You talked about gays in the police department. Do you
5 remember that?

6 A. I remember talking about homosexuals in the military. I
7 don't remember talking about it in the police department.

8 Q. And he said he didn't think it was going to be a big deal
9 to have --

10 A. No, he did not.

11 Q. -- gay people in the military, right?

12 A. No, he did not. No.

13 Yeah, that's what he said.

14 Q. I'm sorry?

15 A. No, I just -- yes, I remember that. I remember that
16 conversation, yes.

17 Q. He talked about -- he talked about politicians with you,
18 correct? Politics and politicians?

19 A. Yeah, we talked about politics a lot.

20 Q. And he told you that Democrats and Republicans are equally
21 as bad but you find good politicians in both parties? He told
22 you that?

23 A. Yes. I think he was more of a Ron Paul guy.

24 THE COURT: Again, Mr. Sullivan, if you mumble, we
25 can't hear you.

Sullivan - Cross

241

1 THE WITNESS: Okay. Yeah, he was talking about that,
2 that there was some good. I think he -- I remember him saying
3 that he, he was more in favor of Ron Paul.

4 BY MS. MORENO:

5 Q. Of Ron Paul, meaning the Libertarian politician?

6 A. I believe him, him saying -- making positive comments. I
7 can't recall exactly what, but I remember positive comments
8 about that.

9 Q. In 2012, February 11, 2012, he talked to you about
10 retiring from the police department. Do you remember that?

11 A. February 11?

12 Q. 2012, sir. You had a conversation with him about
13 Mr. Young retiring from the police force, right?

14 A. Okay. Yes.

15 Q. Right? Do you remember that?

16 A. I remember having conversations with him about him
17 retiring. If it was -- if you're saying it was on that day,
18 then it was on that day.

19 Q. And he told you that he wanted to retire in the United
20 States, right?

21 A. Are you getting this from my notes or recording?

22 THE COURT: Well, you can't ask questions.

23 THE WITNESS: I'm sorry; I'm sorry. I don't, I
24 don't, I don't recall that. I'm trying to look it up right
25 here. I don't recall. I don't recall that conversation.

Sullivan - Cross

242

1 THE COURT: You can lead. Go ahead and lead so we
2 get right to it.

3 MS. MORENO: Thank you.

4 Q. In February 11 -- I'm sorry, February 26, 2012.

5 A. Okay. I was looking at February 11. I didn't see that.

6 Q. Nick Young told you that he envisioned retiring in the
7 United States and owning property in a Muslim country. He told
8 you that, right?

9 A. Yes. I vaguely recall that conversation, yes.

10 Q. Is that right, sir? I'm sorry, I didn't hear you.

11 A. What page? Is that the second page?

12 Q. The very first page, February 22, 2012.

13 A. Yes, okay. Yes, ma'am. He said --

14 Q. This is after you guys went to another movie, the *Act of*
15 *Valor*, right?

16 A. Yes.

17 Q. You went to movies together?

18 A. Yes.

19 Q. All right. And he told you that he wanted to retire in
20 the United States, right?

21 A. Yes, ma'am.

22 Q. And he told you about his conversations with FBI agents at
23 times when they would interview him, correct?

24 A. Yes.

25 Q. Right. And he told you that the U.S. government had asked

Sullivan - Cross

243

1 him if he would commit an act of violence in America.

2 A. Yes.

3 Q. And he said not if he was in his right mind.

4 A. Yes.

5 Q. Right?

6 A. Yes, ma'am.

7 Q. He told you that.

8 And the last communication you had with Nick Young
9 was April 27, 2012, correct?

10 A. Is that when that e-mail was that --

11 Q. I believe so.

12 A. Yes. If that was the e-mail, that was the last
13 communication, I believe.

14 Q. And after April 27, 2012 -- and you know that this was
15 also after he came back from Libya, correct?

16 A. Yes, ma'am.

17 Q. You know that.

18 A. Yes, I knew about that.

19 Q. And -- so Mr. Young, though, was not arrested in April of
20 2012, right?

21 A. No.

22 Q. No. He wasn't arrested.

23 A. No.

24 MS. MORENO: May I have a brief moment, Your Honor?

25 THE COURT: Yes, ma'am.

Sullivan - Redirect

244

1 MS. MORENO: Nothing further.

2 MR. KROMBERG: Your Honor, I'm sorry, but we need to
3 approach on a matter.

4 THE COURT: All right.

5 (Bench conference on the record.)

6 THE COURT: Again, your client is not here. We have
7 to have a consistency with this.

8 MR. SMITH: We just wanted to make sure there wasn't
9 a security issue.

10 THE COURT: This issue is Ms. Moreno.

11 All right, Mr. Kromberg?

12 MR. KROMBERG: Your Honor, Ms. Moreno asked the
13 question, "You wrote that he respected the FBI agents who came
14 to interview him."

15 I'm passing the Court the notes from that. The last
16 line says he respected the agents. The line immediately before
17 that is talking about torturing the FBI agent who came to
18 interview him. That's not respecting them.

19 We should be able to ask what did he really say about
20 the FBI agents who came to interview him.

21 THE COURT: No, let it be.

22 MR. KROMBERG: Okay.

23 (End of bench conference.)

24 REDIRECT EXAMINATION

25 BY MR. KROMBERG:

Sullivan - Redirect

245

1 Q. Very briefly, Mr. Sullivan --

2 THE COURT: Wait, wait.

3 MR. KROMBERG: Oh, sorry.

4 THE COURT: Always wait for my court reporter.

5 BY MR. KROMBERG:

6 Q. Very briefly, Mr. Sullivan, Ms. Moreno asked you about
7 conversations about Mr. Mubarak and the Arab Spring.

8 A. Yes, sir.

9 Q. Directing your attention to February 7, 2011 --

10 A. Yes, sir.

11 Q. -- when you and he were talking about that, what did
12 Mr. Young say about peaceful protests?

13 A. February 7?

14 Q. February 7.

15 A. Mr. Young talked about how that protesting, whether the
16 protesting really wasn't accomplishing anything, and that
17 peaceful protests, you need to seize places by force.

18 Q. Thank you.

19 A. If you want something, you need to take it by force.

20 MR. KROMBERG: Thank you. Nothing further, Judge.

21 THE COURT: Any recross?

22 MS. MORENO: No.

23 THE COURT: All right, thank you. I am assuming
24 Mr. Sullivan will not be called again, or is that a
25 possibility?

1 MR. KROMBERG: Depending on what might happen in the
2 future, he might be called again.

3 THE COURT: All right. Then, Mr. Sullivan, you're
4 still under court control, so to speak, for your subpoena.
5 You're not to discuss your testimony or anything you've seen or
6 heard in court with any witness who has not yet testified.

7 Do you understand?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: All right, you're free to go at this
10 point.

11 THE WITNESS: Thank you.

12 (Witness stood down.)

13 THE COURT: And I think this makes sense to have our
14 morning recess because we have to take the screen down. Again,
15 as much of the trial as possible will be public, and this gives
16 the jury a chance to have your mid-morning break. I'm going to
17 give you-all 15 minutes, so we'll reconvene at 20 after. Thank
18 you.

19 (Recess from 11:04 a.m., until 11:22 a.m.)

20 (Defendant present, Jury out.)

21 THE COURT: Any issues before we bring the jury in?

22 (No response.)

23 THE COURT: No? All right, let's bring them in,
24 please.

25 (Jury present.)

Gervino - Direct

247

1 THE COURT: All right, ladies and gentlemen, I just
2 want to remind you you cannot be in the courtroom unless we
3 have brought you in, so if you have anything that you need, you
4 need to send a note to us, but we sometimes are discussing --
5 have a seat, please. We're sometimes discussing matters,
6 logistics or other issues, and it's not appropriate for the
7 jury to hear, and so it's really important that you follow our
8 instructions on that.

9 So when you come in the morning, you go directly to
10 the jury room, and during the recesses or when you come back
11 from lunch, you go directly, you know, to the jury room, all
12 right? Thank you.

13 All right, call your next witness.

14 MR. TURGEON: The government calls John Gervino to
15 the stand.

16 JOHN GERVINO, GOVERNMENT'S WITNESS, AFFIRMED

17 DIRECT EXAMINATION

18 BY MR. TURGEON:

19 Q. Will you please state your name and spell it for the
20 record.

21 A. It's John Gervino, G-e-r-v-i-n-o.

22 Q. How are you employed?

23 A. I'm a private consultant currently.

24 Q. In May of 2011, how were you employed then?

25 A. I worked for Homeland Security Investigations, and I was

Gervino - Direct

248

1 assigned to the Washington Field Office, Federal Bureau of
2 Investigation's Joint Terrorism Task Force.

3 Q. And what was your specific position?

4 A. I was assigned to the task force, and as an agent, and at
5 the time, I would assist whatever case activity needed
6 assistance.

7 Q. On May 20, 2011, did you have occasion to interview a
8 traveler entering the United States?

9 A. Yes, I did.

10 Q. And who was that traveler?

11 A. Nicholas Young.

12 Q. How do you remember what happened so long ago?

13 A. Well, I've reviewed my notes.

14 Q. Do you have those notes with you in court today?

15 A. I do. They're right here.

16 Q. Do you recognize the defendant?

17 A. He's right here in the middle, with the blue suit, blue
18 tie, yes.

19 THE COURT: Any objection to the identification?

20 MS. MORENO: No objection.

21 THE COURT: All right, the witness identified the
22 defendant.

23 BY MR. TURGEON:

24 Q. How did you happen to encounter the defendant on May 20,
25 2011?

Gervino - Direct

249

1 A. I was at Dulles International Airport, and the defendant
2 was returning from abroad.

3 Q. From which country did his flight originate, if you
4 remember?

5 A. I believe his flight originated in France. Prior to that,
6 he was in Egypt. Prior to that, he was in Libya.

7 Q. How long did you speak with him?

8 A. I want to say approximately an hour.

9 Q. And what did the defendant say about his employment?

10 A. He was a police officer with Metro Transit Police.

11 Q. Do you recall the defendant having any tattoo at that
12 time?

13 A. I do.

14 Q. What, if anything, do you recall about that tattoo?

15 A. When I recall the tattoo, I believe it was on the upper
16 left area of his neck.

17 Q. And what did you think about that?

18 MS. MORENO: Objection.

19 THE COURT: Sustained. His view, his opinion, unless
20 you have something more specific, is not relevant to the case.

21 BY MR. TURGEON:

22 Q. What, if anything, did the defendant tell you about where
23 he had been before returning to the U.S.?

24 A. The defendant told me that he was in Libya, in Benghazi,
25 Libya, and Misrata, Libya.

Gervino - Direct

250

1 Q. And what, if anything, did he tell you about his time in
2 Misrata?

3 A. During his time in Misrata, I believe he spent about three
4 weeks at various locations, and he told me he was providing
5 medical aid to wounded rebels.

6 Q. And who did he tell you that he stayed with during that
7 time?

8 A. He never mentioned a specific individual. He just
9 mentioned that he stayed in various locations in Misrata.

10 THE COURT: Can you spell that, please, as best you
11 can?

12 THE WITNESS: Yes. It's M-i-s-r-a-t-a.

13 THE COURT: And what is that, Misrata?

14 THE WITNESS: It's a province or a location in Libya.

15 THE COURT: All right.

16 BY MR. TURGEON:

17 Q. And what, if anything, did he tell you about the people
18 with whom he stayed while he was there?

19 A. I believe he stayed with humanitarian workers, migrants,
20 and fighters in the house. He stayed with fighters.

21 Q. What, if anything, did you ask him about weapons?

22 A. I asked him if he ever handled or fired a weapon while he
23 was in Libya.

24 Q. And what did he tell you?

25 A. He said he did not fire one, although he wanted to. He

Gervino - Direct

251

1 did, however, handle an AK-47.

2 Q. Do you recall him telling you anything about vehicles in
3 which he rode?

4 A. Yes. He told me he handled an AK-47. He stood on top of
5 a Jeep or gun truck with -- that had a mounted rocket
6 propeller -- rocket-propelled device on top of the vehicle.

7 Q. What did he tell you about his involvement in fighting in
8 Libya?

9 A. He told me -- let me just review my notes, if I may.

10 Q. Sure. Just look up at me when you've finished reviewing
11 your notes.

12 A. Will do.

13 He told me he was shot at on a couple of occasions
14 in, in Libya, in Misrata, and ricochets came very close to him,
15 to him.

16 Q. What did he tell you that he wore while he was in Libya?

17 A. He wore a ballistic vest, which he painted a red crescent
18 symbol on the back of the vest.

19 Q. On what date did he say that he left Libya?

20 A. I believe on or about May 20 of 2011.

21 Q. And on what date was his reservation for leaving Libya?

22 A. For May 30.

23 Q. What did you ask him about the ten-day difference between
24 the day that he left and the day that he was supposed to leave?

25 A. I asked him his reason for leaving early since his

Gervino - Direct

252

1 reservations were booked ten days -- there was a ten-day
2 difference. He said he wanted to save vacation time and save
3 his life.

4 Q. What did he tell you about the level of danger in Misrata?

5 A. It was becoming more -- Misrata was becoming more and more
6 dangerous. There were more mortar rounds landing and -- let me
7 just review my notes, if I may.

8 And larger mortar rounds.

9 Q. What did you ask him about, about people he met over
10 there?

11 A. Throughout the interview, on a number of occasions, I
12 asked him to provide names, descriptions, anything of who he
13 met, and he did not provide any descriptions or names.

14 Q. Well, why did you ask him that question, though?

15 A. Because the U.S. government is very interested in people
16 who, you know, were over there at that particular time.

17 Q. And about how many times did you ask him that?

18 A. There's four occasions throughout our encounter that I
19 asked him for descriptors of people he met.

20 Q. How did he respond?

21 A. He did not recall any details.

22 Q. What did he tell you about how he felt about your
23 interview with him?

24 A. Towards the end of the interview, he said he was angry,
25 and he felt like he was being interrogated.

Gervino - Cross

253

1 Q. What did he tell you about his treatment since 2008?

2 A. He specifically mentioned that -- he said to me, "What
3 gives? I've been getting the stink eye since 2008."

4 To me, that meant he felt he was being surveilled.

5 Q. Did you see his luggage?

6 A. I saw his luggage.

7 Q. And was all of that luggage returned to him?

8 A. I believe Customs and Border Protection kept part of his
9 luggage -- part of his belongings.

10 Q. Did he provide any contacts or telephone numbers?

11 A. Yes, he did.

12 Q. And what was that number?

13 A. One second. 571-236-8195.

14 MR. TURGEON: The Court's indulgence for a moment?

15 THE COURT: Yes, sir.

16 MR. TURGEON: No further questions, Your Honor.

17 THE COURT: All right. Cross-examination?

18 CROSS-EXAMINATION

19 BY MS. MORENO:

20 Q. Mr. Gervino, now, you indicated -- you made a report in
21 this case, correct?

22 A. That's correct.

23 Q. And that's the report that you are reviewing from the
24 witness stand?

25 A. That's correct.

Gervino - Cross

254

1 Q. Right?

2 A. That's correct.

3 Q. And you characterized Mr. Young during this interview that
4 you had with him in May 2011, you characterized him as being
5 cooperative throughout the interview, correct?

6 A. I did.

7 Q. Okay. And that's because he told you in detail where he
8 was going and what he did, right?

9 A. I would not agree to that.

10 Q. Okay. So he told you about when he left, correct?

11 A. Yes, he did.

12 Q. All right. And he told you how long he stayed, correct?

13 A. Yes, he did. Yes.

14 Q. And he told you the ways in which he traveled, correct?

15 A. Yes.

16 Q. He told you the places that he stayed, correct?

17 A. Yes.

18 Q. Right? Like hotels, right?

19 A. Yes.

20 Q. And he told you about people that he stayed with, right?

21 A. No, that's not correct.

22 Q. He told you that -- he described people in Misrata that he
23 had seen, correct?

24 A. Let me -- may I look at my notes again, please?

25 Q. If you can't recall.

Gervino - Cross

255

1 THE COURT: Agent, can you recall without looking at
2 your notes?

3 THE WITNESS: Yes. He, he told me he stayed with
4 migrant workers, rebels, and humanitarian aid people.

5 BY MS. MORENO:

6 Q. Right. And he told you the reasons why he went over
7 there, right?

8 A. Yes.

9 Q. And he told you that he had seen reports that Gaddafi was
10 exterminating his people, right?

11 A. That's correct.

12 Q. And that he wanted to do something that was not for him,
13 correct?

14 A. Correct.

15 Q. And that he intended to write different senators about the
16 situation. Do you remember that?

17 A. Correct, yes.

18 Q. Right? He was going to write John McCain and Joseph
19 Lieberman, correct?

20 A. I do remember that.

21 Q. Complaining about Gaddafi, right?

22 A. Yes.

23 Q. Exterminating his people, correct?

24 A. Correct.

25 Q. And he then detailed some of the equipment that he had

Gervino - Redirect

256

1 with him, correct? Some of his luggage?

2 A. Can you, can you rephrase that?

3 Q. His ballistic equipment.

4 A. Yes.

5 Q. He discussed that, right?

6 A. Yes.

7 Q. And, in fact, that equipment was returned to him. You
8 know that, right?

9 A. I do not know that.

10 Q. Okay. Did you have an occasion to speak with the other
11 agents who returned his equipment?

12 A. I don't recall any conversation.

13 MS. MORENO: Okay. Nothing further.

14 THE COURT: Any redirect?

15 MR. TURGEON: Yes, ma'am.

16 REDIRECT EXAMINATION

17 BY MR. TURGEON:

18 Q. What, if anything, did the defendant tell you about his
19 travel to the Libyan border?

20 A. The defendant mentioned that while in Alexandria, Egypt,
21 he secured a transport to the Libyan border which took
22 approximately seven hours by vehicle.

23 Q. And did you ask him with whom he traveled?

24 A. I did.

25 Q. And what names did he provide you?

Gervino - Redirect

257

1 A. He did not provide names.

2 Q. How many times did you ask him for names of individuals
3 with whom he'd stayed or whom he met overseas?

4 MS. MORENO: Objection. Asked and answered.

5 THE COURT: Sustained.

6 BY MR. TURGEON:

7 Q. What names, if any, did the defendant provide you about
8 individuals he stayed with overseas?

9 MS. MORENO: Objection.

10 THE COURT: Sustained. It's been asked and answered.

11 MR. TURGEON: No further questions, Your Honor.

12 THE COURT: Any recross?

13 MS. MORENO: No.

14 THE COURT: Is anybody going to call Agent Gervino
15 again in the course of the trial?

16 MR. TURGEON: No, Your Honor.

17 THE COURT: What about the defense? Are you going to
18 recall this witness in any respect?

19 MS. MORENO: No, Your Honor.

20 THE COURT: All right. Then, sir, you're now excused
21 as a witness. You can stay in court and watch the proceedings,
22 or you may leave, but you're not to discuss your testimony or
23 anything you see or hear in court with any witness who has not
24 yet testified.

25 THE WITNESS: Thank you.

1 (Witness excused.)

2 THE COURT: Your next witness?

3 MR. GIBBS: We will call Special Agent Minichello,
4 Judge. Actually, Judge, we have some stipulations before that.
5 I apologize.

6 THE COURT: All right.

7 MR. TURGEON: Yes, I have some signed stipulations
8 that the government would like to enter into evidence. First,
9 Your Honor, the government moves to offer a signed stipulation
10 marked Government Exhibit 12-31 into evidence and to read that
11 stipulation to the jury.

12 THE COURT: All right, go ahead.

13 (Government's Exhibit No. 12-31 was received in
14 evidence.)

15 MR. TURGEON: The stipulation reads: The United
16 States and the defendant hereby stipulate and agree that
17 Government Exhibits 16-100 through 16-102 are photographs taken
18 by the FBI and/or U.S. Customs and Border Protection officials
19 of belongings of defendant Nicholas Young upon his arrival at
20 the Washington Dulles International Airport on May 24, 2011.

21 And based on that stipulation, Your Honor, the
22 government offers Government Exhibits 16-101 and 16-102 into
23 evidence and seeks to publish those to the jury.

24 THE COURT: I'm sorry, just 101 and 102? I thought
25 you said the stipulation was 100 through 102.

1 MR. TURGEON: That's correct, Your Honor. We're
2 offering 16-101 and 16-102 only.

3 THE COURT: Any objection to those two going into
4 evidence?

5 MS. MORENO: No objection.

6 THE COURT: All right, they're in.

7 (Government's Exhibit Nos. 16-101 and 16-102 were
8 received in evidence.)

9 THE COURT: Do you want to publish them to the jury?

10 MR. TURGEON: Yes, Your Honor. Could I have 16-101,
11 please? This is a photograph of what appears to be body armor.

12 And 16-102, it's a photograph of the defendant's U.S.
13 passport.

14 THE COURT: All right.

15 MR. TURGEON: The government moves to offer a signed
16 stipulation marked Government Exhibit 12-32 into evidence and
17 to read that stipulation to the jury.

18 THE COURT: Go ahead.

19 (Government's Exhibit No. 12-32 was received in
20 evidence.)

21 MR. TURGEON: The stipulation reads: The United
22 States and the defendant hereby stipulate and agree that
23 Government Exhibit 16-103 is an accurate copy of an e-mail from
24 defendant Nicholas Young to his superiors at the Metro Transit
25 Police Department in August 2011.

1 The government also moves to offer a second
2 stipulation marked Government Exhibit 12-37 into evidence and
3 to read that to the jury.

4 THE COURT: Go ahead.

5 (Government's Exhibit No. 12-37 was received in
6 evidence.)

7 MR. TURGEON: That stipulation reads: The United
8 States and the defendant hereby stipulate and agree that
9 Government Exhibits 16-103, 16-106, -401, and -402 are
10 authentic business records of the Washington Metropolitan Area
11 Transit Authority.

12 And based on those stipulations, the government
13 offers Government Exhibit 16 -- excuse me, Exhibits 16-103,
14 106, 401, and 402 into evidence.

15 THE COURT: Any objection?

16 MS. MORENO: So stipulated.

17 THE COURT: All right, they're in.

18 (Government's Exhibit Nos. 16-103, 16-106, 16-401,
19 and 16-402 were received in evidence.)

20 THE COURT: Are you going to publish any of those or
21 not?

22 MR. TURGEON: Excuse me, Your Honor?

23 THE COURT: Are you going to publish any of those or
24 not?

25 MR. TURGEON: Yes, all of them, please.

1 THE COURT: All right.

2 MR. TURGEON: 16-106. That is a Metro Transit Police
3 oath of office that appears to be signed by the defendant.

4 16-401 is a certificate of completion and training
5 slides for a counterterrorism course held on May 25, 2006.

6 16-402 is another certificate of completion and
7 training slides for a counterterrorism course held on June 27
8 and 28 in 2012.

9 MR. SMITH: Your Honor, we object on relevance
10 grounds.

11 THE COURT: Is this your witness?

12 MR. SMITH: Our objection is that there's no relevant
13 witness --

14 THE COURT: On your feet, please. On your feet.

15 MR. SMITH: The objection is these documents don't
16 seem to pertain to the last witness who was testifying.

17 THE COURT: Well, they don't have to. They're
18 stipulations. The government can put them in at any point.

19 MR. SMITH: They're stipulations as to authenticity,
20 which we agreed to, but the relevance of the documents --

21 THE COURT: Well, there was no objection to their
22 being entered into evidence, so they're in evidence. There was
23 no objection when I asked if there was any objection, so
24 they're in. Overruled.

25 Let's move on.

1 MR. TURGEON: So that's 16-402. And Government
2 Exhibit 16-103, the second e-mail in that e-mail chain is an
3 e-mail from the defendant to his superior at the Metro Transit
4 Police Department, which appears to include travel confirmation
5 for a trip from Washington to Cairo, departing on August 31,
6 2011.

7 THE COURT: Call your next witness.

8 MR. TURGEON: Excuse me, Your Honor. There's one
9 more.

10 THE COURT: All right.

11 MR. TURGEON: The government moves to offer
12 stipulation marked Government Exhibit 12-33 into evidence and
13 to read that stipulation to the jury.

14 THE COURT: Go ahead.

15 (Government's Exhibit No. 12-33 was received in
16 evidence.)

17 MR. TURGEON: That stipulation reads: The United
18 States and the defendant hereby stipulate and agree that
19 Government Exhibit 16-105 is a photograph that accurately
20 depicts the Metro Transit Police Department's Code of Honor
21 document that was found by the FBI and/or U.S. Customs and
22 Border Protection officials among the belongings of the
23 defendant, Nicholas Young, at Hartsfield Jackson Atlanta
24 International Airport, in Atlanta, Georgia, on May 10, 2012.

25 Based on that stipulation, the government offers

Minichello - Direct

263

1 16-105 into evidence.

2 THE COURT: Any objection?

3 MS. MORENO: Not to that exhibit, Your Honor.

4 THE COURT: All right, it's in.

5 (Government's Exhibit No. 16-105 was received in
6 evidence.)

7 MR. TURGEON: And I'd like to publish that to the
8 jury as well.

9 THE COURT: Go ahead.

10 MR. TURGEON: 16-105 is a photograph of what appears
11 to be a signed version of the Metro Transit Police Code of
12 Honor. Thank you.

13 THE COURT: All right, your next witness?

14 MR. GIBBS: Judge, at this time, we'd call Special
15 Agent John Minichello to the stand.

16 THE COURT: All right.

17 SA JOHN RICHARD MINICHELLO, GOVERNMENT'S WITNESS, AFFIRMED

18 DIRECT EXAMINATION

19 BY MR. GIBBS:

20 Q. Good morning, sir.

21 A. Good morning.

22 Q. Sir, would you please state your name for the record and
23 also spell your last name.

24 A. Yes. My name is John Richard Minichello. My last name is
25 spelled M-i-n-i-c-h-e-l-l-o.

Minichello - Direct

264

1 Q. And who do you work for?

2 A. I work for the Federal Bureau of Investigation, or the
3 FBI.

4 Q. And how long have you worked for the FBI?

5 A. At this point, approximately eight years.

6 Q. And where were you assigned in mid-2013?

7 A. I was assigned to the Washington Field Office of the FBI.

8 Q. And that's here in Washington, D.C.?

9 A. That's correct, yes.

10 Q. And at that time in mid-2013, were you working on any
11 investigations that eventually made you aware of the defendant,
12 Nicholas Young?

13 A. I was, yes.

14 Q. Was any other agent assigned to that investigation with
15 you as a co-case agent?

16 A. They were.

17 Q. And who was that?

18 A. My co-case was Agent Cameron Siegfried.

19 Q. And would you know how to spell his last name?

20 A. I'll make sure. Yeah, it should be S-i-e-g-f-r-i-e-d.

21 Q. And, Special Agent Minichello, are you familiar with
22 what's known as a confidential human source, or a CHS?

23 A. I am, yes.

24 Q. What is that?

25 A. A confidential human source is an individual that the FBI

Minichello - Direct

265

1 uses to collect information or evidence related to an
2 investigation.

3 Q. And was a confidential human source introduced into this
4 investigation that you were just testifying about?

5 A. They were, yes.

6 Q. Who was that?

7 A. That was Mo.

8 Q. And was Mo paid in his role as a confidential human
9 source?

10 A. He was, yes.

11 Q. How much was he paid?

12 A. Approximately \$34,000.

13 Q. And what did that roughly \$34,000 include?

14 A. It included both payments for services for activities
15 related to our investigation, and it also covered expenses
16 related to travel and other incidental expenses that came up
17 that he had to pay during the investigation.

18 Q. And is paying a CHS something that the FBI routinely does?

19 A. Yes, that's routine.

20 Q. Now, Special Agent Minichello, what is a handling agent?

21 A. A handling agent is the FBI agent or individual that
22 interacts with the human source and provides them with taskings
23 of what to do and also receives information they've collected
24 to put into reports about their investigation.

25 Q. And in this investigation, who were Mo's handling agents?

Minichello - Direct

266

1 A. Mo's handling agent was both myself and Agent Siegfried
2 that I mentioned earlier.

3 Q. And what did being Mo's handling agent entail?

4 A. Generally, it entailed meeting with the human source, Mo,
5 on a regular basis, receiving information and data collected
6 related to our taskings, and providing them with new taskings
7 about what information we need to collect and how to go about
8 doing that.

9 Q. And, Special Agent, can you explain what a legend or a
10 back story is?

11 A. Sure. When working with a confidential human source,
12 we'll often work out a, what we call a legend or a back story
13 for that source, and what that is, it is a back story that the
14 source can provide to subjects or other individuals that
15 they're interacting with that isn't their real personal
16 history.

17 The reason for that is that the human source risks
18 exposure to them and their families with the subjects if those
19 subjects would be aware of who they actually were, and so we
20 give them this back story. It also allows the human source to
21 provide a reason for being where they are and for interacting
22 with the subjects.

23 Q. And what was Mo's legend or back story?

24 A. Mo's back story was that he was of Palestinian descent and
25 that he had previously been with the United States military.

Minichello - Direct

267

1 Q. And when Mo started working for the FBI as a confidential
2 human source, what, if anything, was he told about keeping his
3 relationship with the FBI secret?

4 A. Mo was advised that for his own safety, he should not tell
5 other people that he was working with the FBI.

6 Q. But at some point in the investigation, did you learn that
7 Mo had, in fact, told somebody about his relationship with the
8 FBI?

9 A. We did, yes.

10 Q. All right. Can you describe what happened?

11 A. Yeah. Briefly, we received an e-mail -- I received an
12 e-mail from an individual who was clearly not Mo, and that
13 e-mail intimated that that individual was aware that Mo was
14 working with the FBI.

15 Q. And as a result of getting that e-mail that was clearly
16 not from Mo, what did you do?

17 A. We were concerned about the safety of the human source,
18 Mo, and so we looked carefully to identify who was the sender
19 of that e-mail and then to deal with the source, to figure out
20 who else the source might have informed that he was working
21 with the FBI.

22 Q. And can you describe what you did to try to get to the
23 bottom of this event?

24 A. Yeah. We did a number of different actions after we got
25 that e-mail. Those included discussing the matter with the

Minichello - Direct

268

1 human source, and also conducted research on our own pertaining
2 to the e-mail as well as the individual we later identified to
3 be the sender of that e-mail.

4 Q. And who did you determine that Mo had actually told about
5 his relationship with the FBI?

6 A. Initially, we determined that an individual named
7 Stephanie and as well as an individual named Keith were
8 individuals that Mo had told about his working relationship
9 with the FBI, and then later, we also determined that there was
10 another individual named David.

11 Q. And who did you determine Stephanie was?

12 A. Stephanie was Mo's girlfriend at the time.

13 Q. And who did you determine David and Keith were?

14 A. David and Keith were both individuals that were involved
15 in the same line of work that Mo was.

16 THE COURT: I'm sorry, what do you mean by same line
17 of work?

18 THE WITNESS: Do you want me to clarify?

19 THE COURT: Well, do you mean they were other
20 undercover people or they had --

21 THE WITNESS: No, I apologize, in the same line of
22 work that Mo is involved in now.

23 THE COURT: All right.

24 MR. GIBBS: Thank you, Judge.

25 Q. Now, Special Agent Minichello, when did this occur?

Minichello - Direct

269

1 A. In roughly April of 2014.

2 Q. And had Mo been introduced to the defendant by that point?

3 A. He had not, no.

4 Q. And when was Mo eventually introduced to the defendant?

5 A. Mo was introduced to the defendant in May of 2014.

6 Q. Now, you testified that in April 2014, Mo was not
7 reporting on the defendant and hadn't met the defendant at that
8 point, correct?

9 A. At the time of the incident you're talking about, yes,
10 that is correct.

11 Q. Yes. But at some point, did Mo start to provide
12 information about the defendant?

13 A. Yes.

14 Q. And did the FBI ultimately task Mo to start recording his
15 interactions with the defendant using the FBI's equipment?

16 A. We did, yes.

17 Q. And when was that?

18 A. The first recordings were in July of 2014.

19 Q. And from that point forward in July of 2014, was Mo always
20 recording his interactions with the defendant?

21 A. Mo was, yes.

22 Q. Now, what was the procedure to get these recordings back
23 from Mo once they were done?

24 A. Mo was issued an FBI recording device, which he kept on
25 his person and could activate and deactivate prior to his

Minichello - Direct

270

1 meetings with the subject, Nick Young. Once that had occurred,
2 we would meet with Mo at the soon as practical time that didn't
3 put him in danger, retrieve that device, and then we would be
4 able to access the information on that device after retrieval.

5 Q. And, Special Agent Minichello, did there come a point in
6 time that Mo was removed from the investigation of the
7 defendant?

8 A. He was, yes.

9 Q. Why was that?

10 A. We mentioned before the concept of a story arc or a
11 legend. The legend that had been developed with Mo naturally
12 culminated with his supposed travel to join ISIS, the terrorist
13 group, and that is what we engineered into the structured story
14 with Nicholas Young. It therefore made sense for the source's
15 credibility to culminate that story arc with the source
16 departing and actually traveling to join ISIS, and that's the
17 point at which we removed him.

18 Q. And, Special Agent Minichello, before Mo reportedly left
19 this area, did he and the defendant set up e-mail accounts?

20 A. They did, yes.

21 Q. Okay. And whose idea was it to set up those e-mail
22 accounts?

23 A. That was Nicholas Young's idea.

24 THE COURT: I'm sorry? That was whose idea?

25 BY MR. GIBBS:

Minichello - Direct

271

1 Q. Whose idea was that?

2 A. Yeah, the subject's.

3 MR. GIBBS: Okay. Your Honor, we have a stipulation,
4 it's Stipulation No. 1, I'd like to read into the record.

5 THE COURT: All right.

6 MR. GIBBS: The United States and the defendant
7 hereby stipulate and agree that Government Exhibits 1-101
8 through 1-222 are authentic business records of 1&1 Mail &
9 Media, Incorporated.

10 And, Your Honor, at this time, I'd like to have the
11 witness look at one of those exhibits that was just referenced,
12 and that would be Government Exhibit 1-200.

13 THE COURT: Is there any objection to 1-200?

14 MR. SMITH: No.

15 (Government's Exhibit No. 1-200 was received in
16 evidence.)

17 BY MR. GIBBS:

18 Q. And, Special Agent, what is 1-200?

19 A. This exhibit is -- it's subscriber information for an
20 e-mail account.

21 Q. And do you know whose e-mail account this is?

22 A. Yes.

23 Q. And whose e-mail account is this?

24 A. The e-mail account essakobayashi@mail.com was used by
25 Nicholas Young.

Minichello - Direct

272

1 MR. GIBBS: And if we could publish that?

2 And if we could go to the second page?

3 Q. Special Agent Minichello, looking at the bottom of the
4 second page, what was the first date listed for this Essa
5 Kobayashi account?

6 A. Do you want the very last date listed or the --

7 Q. Yeah, the -- yeah, the last date. It begins at the
8 bottom.

9 A. October 25, 2014.

10 Q. Thank you. And, Special Agent Minichello, when did Mo
11 supposedly leave the country?

12 A. Mo supposedly left the country and did actually leave the
13 country in October of 2014.

14 THE COURT: I'm sorry, your voice trails off. You
15 need to stay near the microphone and keep it up.

16 THE WITNESS: I apologize, Your Honor.

17 THE COURT: All right. And that answer again,
18 please?

19 THE WITNESS: Of course. October of 2014.

20 BY MR. GIBBS:

21 Q. And where did Mo tell the defendant he was going to first?

22 A. Mo indicated that he was going to first travel to Turkey.

23 Q. And you said Mo did travel overseas, in fact, and did Mo,
24 in fact, go to Turkey?

25 A. He did, yes.

Minichello - Direct

273

1 Q. Who went with him?

2 A. I did.

3 Q. Now, what was the reason for actually traveling abroad
4 with Mo?

5 A. There were a couple reasons, but the primary reason was
6 that by traveling to Turkey -- by Mo actually traveling to
7 Turkey, it created a record of his travel in government
8 systems, and there was concern at the time that Nicholas Young
9 might have access to government records and be able to check
10 whether Mo had actually traveled to Turkey.

11 Q. And what did you and Mo do in Turkey to backstop his
12 travel story?

13 A. While we were in Turkey, we traveled primarily in Istanbul
14 and took photographs and other -- collected other information
15 that we could send back to verify that Mo was actually in
16 Turkey at that time.

17 Q. And at this time, sir, I'd like to have you take a look at
18 Government Exhibit 1-101. Do you have that?

19 A. I do.

20 Q. And what is this exhibit?

21 A. This is an e-mail message sent from an account, V x
22 Vendetta, V4Vendetta, to account essakobayashi@mail.com.

23 Q. And what's the date on that e-mail?

24 A. The e-mail is dated October 27, 2014.

25 MR. GIBBS: Your Honor, at this time, we would move

Minichello - Direct

274

1 in Government Exhibit 1-101.

2 THE COURT: Any objection?

3 MR. SMITH: No.

4 THE COURT: All right, it's in.

5 (Government's Exhibit No. 1-101 was received in
6 evidence.)

7 MR. GIBBS: And if we could publish that, please?

8 THE COURT: Go ahead. Blow it up. The jury can't
9 see that.

10 MR. GIBBS: We'll zoom in on that, Judge.

11 Q. Special Agent Minichello, who wrote this e-mail?

12 A. This e-mail was a collaborative effort between myself and
13 Mo.

14 Q. And which one -- can you identify which e-mail address is
15 Mo's?

16 A. Yes. Mo's e-mail address is the first one there, that
17 V4Vendetta@mail.com.

18 Q. And which one is Young's?

19 A. Essakobayashi@mail.com.

20 Q. And you testified a few minutes earlier that before Mo
21 left, the defendant and he set up e-mail accounts so they could
22 communicate?

23 A. That's correct.

24 Q. Are these the e-mails they set up?

25 A. That is also correct, yes.

Minichello - Direct

275

1 Q. Okay. And the e-mail indicates that there's an
2 attachment. What's attached to this e-mail?

3 A. There's a photograph attached to that e-mail, and it's a
4 photograph of the Libyan consulate in Istanbul.

5 MR. GIBBS: So if we could pull that up?

6 Q. And, Special Agent Minichello, what was Young's connection
7 to Libya?

8 A. Young had traveled to Libya prior to this and had
9 discussed that with the source, Mo.

10 Q. Next, if I could have you take a look at Government
11 Exhibit 1-102?

12 THE COURT: Any objection?

13 MR. SMITH: No.

14 THE COURT: All right, it's in.

15 (Government's Exhibit No. 1-102 was received in
16 evidence.)

17 MR. GIBBS: Thank you. We'll move it in. Publish
18 it, please. And if we could zoom in on that?

19 Q. And just briefly, what is this e-mail?

20 A. This is a second e-mail from the V4Vendetta account used
21 by Mo to Essa Kobayashi, which was used by Nicholas Young.

22 Q. And if you look at that e-mail, towards the end, it says,
23 quote -- it talks about Mo meeting someone raising money for
24 the mujahideen, and then it reads, "He is helping me get to my
25 next step, he knows some of the guys we talked about down

Minichello - Direct

276

1 south."

2 Now, the "guys we talked about down south," what did
3 you intend to convey using that term?

4 A. That term is a reference to ISIS based on the source and
5 Nicholas Young's previous conversations.

6 Q. And what did you intend to convey in that e-mail by using
7 the term "mujahideen"?

8 A. Again, this is supposed to be a reference to ISIS.

9 Q. Thank you.

10 Next, if I could have you take a look at Government
11 Exhibit 1-103?

12 And we would ask to move that one into evidence.

13 THE COURT: Any objection?

14 MR. SMITH: No, Your Honor.

15 THE COURT: All right, it's in.

16 (Government's Exhibit No. 1-103 was received in
17 evidence.)

18 MR. GIBBS: If we could publish it?

19 THE COURT: You may publish it.

20 BY MR. GIBBS:

21 Q. And while we're zooming in, Special Agent Minichello, what
22 is Government Exhibit 1-103?

23 A. This is a third e-mail from the V4Vendetta account to the
24 Essa Kobayashi account we discussed.

25 Q. And what was the date of this third e-mail?

Minichello - Direct

277

1 A. It was dated October 30, 2014.

2 Q. Now, did you include any photographs with this e-mail?

3 A. I did, yes. There are three.

4 Q. And if you could -- we'll go through each of the three
5 photographs. If you could indicate just what they are briefly?

6 A. Of course. The one marked U.S. 00150 is a photograph of
7 the Blue Mosque. A similar photograph of the Blue Mosque is
8 for 151.

9 Q. And let's get caught up.

10 That's the Blue Mosque in Istanbul?

11 A. That's correct.

12 Q. And then what's the third photograph?

13 A. The third photograph is a picture of green birds in a tree
14 that we took while in Istanbul.

15 Q. And what's the significance of a photograph of green
16 birds?

17 A. Based on my experience, the reference to green birds is a
18 reference that individuals involved with extremist groups are
19 aware of, as green birds are believed to carry the souls of
20 martyrs to heaven.

21 Q. Now, in that e-mail, you wrote, "Im leaving the city
22 tomorrow and headed south." What was "south" a reference to?

23 A. "South" was a reference to traveling to Syria, which was
24 south of where he was currently.

25 Q. And how much longer did you and Mo remain in Turkey after

Minichello - Direct

278

1 that e-mail?

2 A. Within the next 24 hours, we departed from Turkey.

3 Q. And where did you and Mo go after leaving Turkey?

4 A. Mo and I returned to the United States.

5 Q. And, Special Agent Minichello, at some point after
6 returning to the United States, did the FBI obtain the
7 defendant's telephone records?

8 A. We did, yes.

9 Q. If you could, take a look at Government Exhibit 6-202.

10 THE COURT: Is there any objection to 6-202?

11 MR. SMITH: One moment, Your Honor.

12 No.

13 THE COURT: It's in.

14 (Government's Exhibit No. 6-202 was received in
15 evidence.)

16 MR. GIBBS: We will move it in.

17 Q. What is 6-202, Special Agent?

18 A. 6-202 is a court order ordering a telephone provider, in
19 this case Verizon Wireless, to provide telephone records to the
20 FBI.

21 Q. And what's the date of this court order?

22 A. The order is dated --

23 Q. It should be on the last page.

24 A. Yes. Sorry, I'm flipping back.

25 It's dated November 7, 2014.

Minichello - Direct

279

1 MR. GIBBS: Could we pull up the first page of that,
2 please?

3 Q. In the first paragraph there is the number, the
4 571-236-8195. Is that the defendant's telephone number?

5 A. That's correct, yes.

6 Q. Now, what was the reason for getting the defendant's
7 telephone records when you did?

8 A. We wanted to have an active order in place that provided
9 us with telephone records because we were aware that based on
10 discussions between Mo and the defendant, the defendant would
11 likely send a text communication to Mo as part of their plan.

12 Q. And was Mo told that you had gotten the defendant's
13 telephone records?

14 A. No.

15 Q. What was Mo told about whether he should keep the same
16 telephone that he and the defendant had been communicating on?

17 A. Mo was clearly instructed to keep that telephone number
18 active in case the defendant contacted him.

19 Q. And what was Mo instructed to do if he received any
20 communications from the defendant?

21 A. Mo was instructed to immediately contact myself if he
22 received such communication.

23 Q. And did you, in fact, receive a phone call from Mo about
24 Nick Young?

25 A. I did, yes.

Minichello - Direct

280

1 Q. And what did you two discuss in that telephone call?

2 A. I directed Mo to send me the text message that he received
3 from Nicholas Young.

4 Q. And if you would, please take a look at Government Exhibit
5 6-201.

6 THE COURT: Any objection?

7 MR. SMITH: No objection.

8 THE COURT: It's in.

9 (Government's Exhibit No. 6-201 was received in
10 evidence.)

11 MR. GIBBS: And if we could publish that?

12 THE COURT: Go ahead.

13 BY MR. GIBBS:

14 Q. And, Special Agent Minichello, what is Government Exhibit
15 6-201?

16 A. This is a record of a text message that was forwarded to
17 me by Mo after that discussion we mentioned.

18 Q. And there are a few places at the top of that document
19 that are redacted. Do you see that?

20 A. I do, yes.

21 Q. Do you know what those redactions are of?

22 A. Yes. They're redactions of the source's telephone number.

23 Q. Mo's telephone number?

24 A. Correct.

25 Q. And did you have an opportunity to see this document

Minichello - Direct

281

1 before the redactions were there?

2 A. I did, yes.

3 Q. And did you recognize Mo's telephone number?

4 A. I did, yes.

5 Q. Now, what is the date that this text message was forwarded
6 to you from Mo?

7 A. On November 20, 2014.

8 Q. And what is the time?

9 A. The time listed there you can see is 11:06 p.m.

10 Q. And who is, who is it sent to?

11 A. It was sent to, you can see there the
12 echotranslation2011@gmail.com, which is an e-mail account that
13 I controlled. It was tied to a telephone number that Mo
14 forwarded that text to me.

15 Q. So echotranslation was your account?

16 A. Correct.

17 Q. Now, as a result of getting the court order for the
18 defendant's telephone number that you testified about a few
19 moments ago, was the FBI able to determine if the defendant
20 had sent a text message to Mo's phone at around eleven o'clock
21 on November 20, 2014?

22 A. Yes, we had.

23 Q. I'd like you to take a look at Government Exhibit 6-203.

24 THE COURT: Any objection?

25 MR. SMITH: No.

Minichello - Direct

282

1 THE COURT: It's in.

2 (Government's Exhibit No. 6-203 was received in
3 evidence.)

4 MR. GIBBS: Thank you. If we could publish that?

5 Q. Once it's up, if you could explain to the jury what this
6 document is?

7 A. Absolutely. The image you see here is an image taken from
8 our system, system record with the FBI that allows us to view
9 telephone records that have been provided to us by a telephone
10 provider. So a telephone provider gives us the records, and
11 our system allows us to look at those records in a clear and
12 concise manner. This is the image of what we see when we look
13 up those records that were provided to us.

14 MR. GIBBS: Is there any way to enlarge that at all,
15 or are we stuck with what we've got?

16 Q. And, Special Agent Minichello, what is listed as the
17 target number here?

18 A. The target number, that's 1-571-236-8195.

19 Q. And whose record is that?

20 A. Nicholas Young's.

21 Q. Now, the destination number is blacked out. Do you see
22 that redaction there?

23 A. I do, yes.

24 Q. Were you able to look at this before it was blacked out?

25 A. I was, yes.

Minichello - Direct

283

1 Q. And whose number was under the blacked-out portion?

2 A. That was Mo's number.

3 Q. And finally, how does the date and time on this document
4 from the Verizon record compare with the date and time listed
5 on the previous exhibit?

6 A. The date is identical. The time is approximately four to
7 five minutes prior to the previous exhibit.

8 Q. And had Mo been instructed that if he got any text
9 messages or communications from the defendant, it was important
10 to immediately notify you?

11 A. He was, yes.

12 Q. And, Special Agent Minichello, how much longer did you
13 remain on the investigation after Mo supposedly left to go join
14 ISIS?

15 A. I remained involved in the investigation until end of
16 November-early December 2015, when I transferred to a different
17 field office with the FBI.

18 Q. Okay. And finally, if we go back just briefly to
19 Government Exhibit 6-201, to the last page there?

20 A. Okay.

21 Q. Now, you testified that this was the text message
22 forwarded to you by Mo, correct?

23 A. That's correct.

24 Q. And is the text -- or the words in that text message
25 included at the end of that document?

Minichello - Cross

284

1 A. They are, yes.

2 Q. And what does that say?

3 A. The forwarded text message reads: "Salam. Hope you had a
4 good vacation. If you want to grab lunch after jumma, hit me
5 up."

6 MR. GIBBS: Thank you. That's all I've got. I
7 believe the defense will have some questions with you. Thank
8 you.

9 MR. SMITH: Yes.

10 THE COURT: All right, Mr. Smith?

11 CROSS-EXAMINATION

12 BY MR. SMITH:

13 Q. Good afternoon, Agent Minichello.

14 A. Good morning. How are you?

15 Q. Well. How are you?

16 A. Doing well.

17 Q. So, Mr. Minichello, you've testified that you were the
18 handler agent for Mo, the CHS, the confidential human source in
19 this case?

20 A. I was one of the handlers.

21 Q. One of the handlers. And Agent Siegfried was the other,
22 the co-handler?

23 A. Correct.

24 Q. Now, you've testified that the -- that you would work with
25 the confidential human source to create a legend that would

Minichello - Cross

285

1 allow the confidential human source to report on certain
2 targeted individuals; is that right?

3 A. Correct.

4 Q. And the purpose of creating this legend was to establish
5 trust between the confidential human source and the target,
6 correct?

7 A. That was a part of it, yes.

8 Q. And the purpose was to establish a personal connection
9 between the informant and the, and the target, correct?

10 A. In some ways, yes, to establish some personal connection
11 as well as to obfuscate some personal connection that the
12 defendant --

13 Q. So the legend you helped create for Mo, among other
14 things, was that he was Palestinian, correct?

15 A. Correct.

16 Q. That he had a grandmother in Palestine in the West Bank,
17 correct?

18 A. Yes.

19 Q. That she was under fire in the West Bank, correct?

20 A. I don't recall that aspect of that.

21 Q. We'll get to that.

22 That she had a sister in the West Bank, correct?

23 A. I believe so, yes.

24 Q. He had a strained relationship with his father, correct?

25 A. Yes.

Minichello - Cross

286

1 Q. Yes. He went to George Mason University, correct?

2 A. I don't recall.

3 Q. We'll get to that, but --

4 THE COURT: Well, you don't need to say, "We'll get
5 to that." Let's just ask the question.

6 MR. SMITH: Okay.

7 Q. So there were occasions when, when you worked with Mo, the
8 informant, that he would be recorded, he'd be wearing a wire,
9 correct?

10 A. That is correct, yes.

11 Q. There were also occasions when he wasn't wearing a wire,
12 correct?

13 A. That's correct, yes.

14 Q. When he's reporting on Nicholas Young?

15 A. Correct.

16 Q. And you testified that Nicholas Young met Mo, the
17 informant, in May of 2014, correct?

18 A. Correct.

19 Q. That he wasn't wired, right?

20 A. At the time that he met Nick Young, is that what you're
21 asking?

22 Q. Yes.

23 A. Correct.

24 Q. Now, you've testified that Mo had lied to the FBI in April
25 of 2014, correct?

Minichello - Cross

287

1 A. Right.

2 Q. So you're relying on Mo, the liar, to report on Nicholas
3 Young unrecorded, correct?

4 A. No. I was relying on Mo, who had told a lie but is not a
5 liar.

6 Q. Okay. So he meets Nicholas Young -- the informant meets
7 Nick on what date, do you remember?

8 A. I don't recall.

9 Q. It was May 22, right?

10 A. I don't recall but somewhere around there, yes.

11 MR. SMITH: A document.

12 THE COURT: Wait, wait, you stay right there.

13 THE WITNESS: Thank you.

14 THE COURT: Is there a question?

15 BY MR. SMITH:

16 Q. The question is did you draft -- do you see a memo in
17 front of you right now?

18 A. Yes.

19 Q. It's an FBI memo, right? It's called a 1036 memo?

20 A. Okay.

21 Q. What is a 1036 memo?

22 A. Well, in this case, it's a report of a -- basically a
23 report of a report of information that I collected from a
24 source.

25 Q. Okay. And you were collecting information from the source

Minichello - Cross

288

1 in that particular memo on Nicholas Young meeting with the
2 informant, correct?

3 A. Yes, that's correct.

4 Q. You didn't record -- you didn't instruct Mo to wear a wire
5 on that occasion, correct?

6 A. Not that I recall.

7 Q. Why didn't you?

8 A. We often don't have sources record every conversation they
9 have with individuals.

10 Q. When you review your notes, your summary of that meeting
11 on May 22 between the informant and Nicholas, did you record
12 that Nicholas discussed ISIS with Mo?

13 A. Did I record as in conduct a recording, or did I write --

14 Q. Did you reflect in your memorandum dated May 22, 2014 --

15 A. Understood. I'm sorry, what was it you were asking about
16 then?

17 Q. Did you reflect --

18 THE COURT: Wait, stop one second. You both have to
19 slow down. You have to speak more slowly and louder. Stop
20 rustling papers. It gets picked up on the microphone,
21 Mr. Smith, all right?

22 MR. SMITH: Sorry, sorry.

23 THE COURT: All right, let's start over. Ask the
24 question, please.

25 BY MR. SMITH:

Minichello - Cross

289

1 Q. The memorandum you're holding right now was drafted by
2 you, correct?

3 A. The information in there was, yes.

4 Q. Okay. It's dated May 22, correct? The meeting that
5 allegedly occurred between the informant and --

6 A. May 22, that is correct.

7 Q. Okay.

8 A. The memorandum is not.

9 Q. Now, your summary of that meeting as reported to you by
10 the informant, who is not wired, on May 22, does your summary
11 include any discussion between Nicholas Young and the informant
12 on the subject of ISIS?

13 A. Does not appear to in this particular report.

14 Q. You've testified today that this meeting was not recorded,
15 correct?

16 A. That is correct.

17 Q. Isn't it true that the case agent in this case originally
18 believed this meeting was recorded?

19 A. I don't recall.

20 Q. Okay. I'm handing up some documents.

21 THE COURT: Mr. Young -- I'm sorry, Mr. Smith, there
22 is a microphone there. Every time you hit the microphone --

23 MR. SMITH: I apologize, Your Honor. I apologize.

24 THE COURT: All right.

25 MR. SMITH: I'll try to be quiet.

Minichello - Cross

290

1 THE COURT: All right, this is taking too long.
2 Ladies and gentlemen, I'm going to give you a five-minute
3 break. I'm going to get this better organized.

4 MR. SMITH: It's organized right now, Your Honor. I
5 can --

6 THE COURT: All right. No more of these long delays.
7 Now, what is the question?

8 BY MR. SMITH:

9 Q. The question is do you see the e-mail from March 23 from
10 the case agent in this case, Nicholas Caslen, indicating the
11 number of meetings between the informant and Nicholas that were
12 not recorded?

13 THE COURT: March 23 --

14 MR. SMITH: March 23 e-mail from Nicholas Caslen.

15 THE COURT: Of what year?

16 MR. SMITH: 2016.

17 THE WITNESS: I mean, that's not what it says. It
18 says, "I think." It's implying that it's unclear.

19 BY MR. SMITH:

20 Q. Do you see the e-mail in which the case agent says, "I
21 think there are one or two unrecorded e-mails"? The e-mail is
22 dated March 23, 2016. Do you see --

23 A. The e-mail that I see reads, "I think the first one or two
24 weren't recorded. I will get in touch with Cam and a former
25 handler to get the specifics."

Minichello - Cross

291

1 Q. When Mr. Caslen says, "I will get in touch with Cam and
2 the former handler," who was he referring to?

3 A. Both with myself and Cameron Siegfried, the agent we
4 discussed earlier.

5 Q. Now, did Mr. Caslen get in touch with you as indicated in
6 that e-mail of March 23, 2016?

7 A. I don't recall specifics of the discussions, but yes, we
8 had discussions of him about which means were recorded.

9 THE COURT: Agent, you've still got to speak up.

10 THE WITNESS: I'm sorry, Your Honor.

11 THE COURT: You're fading away.

12 THE WITNESS: I apologize.

13 BY MR. SMITH:

14 Q. Now, can you turn your attention to the March 24, 2016,
15 e-mail in front of you?

16 A. Okay. I see it.

17 Q. Is that an e-mail from Special Agent Nicholas Caslen?

18 A. Yes, it is.

19 Q. What does it say?

20 A. It says, "It looks like there were four meets that weren't
21 recorded," and it lists dates.

22 Q. What are those dates?

23 A. The first date is May 31, 2014; the second date is June 5,
24 2014; a third date is June 9, 2014; and the fourth and last
25 date is July 12, 2014.

Minichello - Cross

292

1 Q. Did Mr. Caslen, as referenced in the March 23, 2016,
2 e-mail we just reviewed, speak to you about the number of
3 unrecorded dates before he wrote the e-mail on March 24, 2016?

4 A. I can't recall.

5 Q. You cannot recall.

6 You've testified that the first time Mr. Young met
7 with the informant was May 22, 2016, correct, as reflected in
8 your --

9 A. I testified it was in May, yes. I believe you said the
10 date from the report.

11 THE COURT: 2014.

12 MR. SMITH: 2014, correct.

13 Q. So this meeting was not recorded, but the case agent
14 originally believed it may have been, and you're stating he was
15 incorrect?

16 A. I was stating that he did not know based on that e-mail,
17 yes.

18 Q. He said that he was going to reach out to you, but he did
19 not, you're testifying?

20 A. Did not reach out to me? No.

21 Q. Reach out to you about the number of unrecorded --

22 A. I'm saying I can't recall the number of conversations I
23 had with Nick Caslen about that. I'm also saying that he
24 appeared unsure based on the e-mail whether or not those
25 meetings were recorded.

Minichello - Cross

293

1 Q. I understand. You've testified today that the first
2 recording between the undercover informant and Nicholas Young
3 was made in July 2014, correct?

4 A. The first recording that Mo made during -- that I have on
5 record recorded was in July of 2014.

6 MR. SMITH: Can you put on the May 29 tape?

7 MR. ENNS: May 29?

8 MR. SMITH: May 29, 2014.

9 This was produced -- this is a record that was
10 produced to us in discovery, Your Honor.

11 THE COURT: Is there an objection to this?

12 MR. GIBBS: No, Judge.

13 THE COURT: All right.

14 MR. SMITH: Just go to 14 minutes, 40 seconds.

15 THE COURT: I don't think it's happening. Let's go.

16 MR. SMITH: Can you turn to May 29? Okay. We'll get
17 back to that.

18 May 29, 2014.

19 THE COURT: He says it's not -- Mr. Smith, back at
20 the lectern. Move on. You don't have it.

21 MR. SMITH: Okay.

22 Q. Do you recall the first occasion in which Mr. Young
23 allegedly discusses ISIS with the CHS, the informant?

24 A. I don't recall the exact date, but I know we recorded it.

25 Q. Okay.

Minichello - Cross

294

1 A. Made a record of it, sorry.

2 Q. You did make a record?

3 A. Of the recording, yes.

4 Q. Do you see the memorandum in front of you?

5 A. I do.

6 Q. Did you draft it?

7 A. Yes.

8 Q. It's dated -- what's the date of the meeting on the
9 memorandum you drafted between the informant and Nicholas
10 Young?

11 A. The date of the meeting is on 29 June 2014 -- no, I'm
12 sorry, that's reporting it. It's not the date of the actual
13 meeting.

14 Q. Correct. And you report, you write, you transcribe there
15 that Mr. -- the informant informed you that Nicholas Young and
16 the informant discussed ISIS on that occasion, on June 29,
17 2014, right?

18 A. Yes, that's correct.

19 Q. Mo was not wearing a wire on this occasion, correct?

20 A. That is correct.

21 Q. Okay. Now, let's take a step back. You testified earlier
22 that the first recorded meeting between Nicholas Young and the
23 informant was from July of 2014, correct?

24 A. Recorded or reported? I'm sorry.

25 Q. Recorded meeting. The first meeting in which the CHS, Mo,

Minichello - Cross

295

1 was wearing a wire with Nicholas Young was in July 2014,
2 correct?

3 A. That's correct.

4 MR. SMITH: Okay. We're playing a recording that was
5 marked May 29 -- May 31, 2014.

6 THE COURT: Does this have an exhibit number so we
7 have it for the record?

8 MR. SMITH: We're going to mark it as Defense
9 Exhibit 1.

10 THE COURT: Is there any objection to Defense
11 Exhibit 1?

12 MR. GIBBS: No, Judge.

13 THE COURT: All right, it's in.

14 (Defendant's Exhibit No. 1 was received in evidence.)

15 MR. SMITH: 14:40.

16 THE COURT: This is taking too long. Move on to
17 something else.

18 MR. SMITH: You'll let me know when you've got it,
19 right?

20 Q. So we're about to discuss a May 29 meeting that was
21 recorded by your informant, Mo. During this May -- after this
22 May 29 meeting, you drafted this memo.

23 THE COURT: Mr. van Roekel?

24 BY MR. SMITH:

25 Q. You see it doesn't have a date on it, does it? It's

Minichello - Cross

296

1 redacted, right?

2 A. I'm checking, please.

3 MR. SMITH: Have you got it?

4 MR. ENNS: 14:40.

5 MR. SMITH: Okay. Just hold on to it for a second,
6 okay?

7 THE WITNESS: Yeah, this document does not have a
8 date.

9 BY MR. SMITH:

10 Q. It does not have a date on it, does it?

11 A. That's right.

12 Q. The date, if you look at the top section of the memo,
13 there's a redacted box, correct?

14 A. There is a redacted box, yes.

15 Q. Where a date might be to indicate when the meeting was
16 held, right?

17 A. It's blacked out. I can't tell.

18 Q. If you turn the memorandum over, you'll see a highlighted
19 passage about the Soviet invasion of Afghanistan. Do you see
20 that?

21 A. I see the highlighted passage. Let me read it real quick.

22 MR. SMITH: This is a section --

23 (Defendant's Exhibit No. 1 excerpt was played.)

24 BY MR. SMITH:

25 Q. Do you recognize that voice that said, "Were they

Minichello - Cross

297

1 legitimate jihadis, or were they criminals?" Do you recognize
2 that voice?

3 A. I'd have to listen to it again, I'm sorry.

4 Q. Excuse me?

5 A. I'd have to listen to it again, I'm sorry.

6 MR. SMITH: Play it again.

7 (Defendant's Exhibit No. 1 excerpt was played.)

8 MR. SMITH: Pause it.

9 Q. Did you hear the phrase, "Was that a jihad, or were they
10 criminals?" Did you hear that phrase?

11 A. I believe so, yes.

12 Q. Whose voice is that?

13 A. The primary voice speaking there, and actually now I can't
14 remember, I'd have to go back and listen to it again --

15 Q. I'm referring to the last --

16 A. The primary voice speaking as you hear it is, it sounds
17 like Mo.

18 Q. Yes. And the last voice, did you hear the phrase: "Were
19 they rebels or were they -- were they legitimate jihadis or
20 were they criminals?" Did you hear the phrase in the clip we
21 just played?

22 A. I'd have to hear it again, I'm sorry. I'll listen --

23 THE COURT: No, we're not hearing it again.

24 BY MR. SMITH:

25 Q. Okay. That voice, is that voice not Nicholas Young?

Minichello - Cross

298

1 A. I can't tell.

2 Q. You can't tell.

3 There's a highlighted passage on your memorandum.

4 Can you read that for me, please? What does it say?

5 A. Yes, absolutely. It said, "Nick appeared to agree with
6 Peshwaz and stated that the Soviet invasion" --

7 THE COURT: Agent, you've got to speak louder and
8 more slowly.

9 THE WITNESS: Of course. "Nick appeared to agree
10 with Peshwaz and stated that the Soviet invasion of Afghanistan
11 was a legitimate jihad. Nick argued that" --

12 BY MR. SMITH:

13 Q. So if I understand you correctly, you've reflected in that
14 memorandum that Nick agreed, Nicholas Young, the defendant,
15 agreed with Peshwaz that the Soviet invasion -- that there was
16 a legitimate jihad against the Soviet invasion of Afghanistan,
17 correct?

18 A. The Soviet invasion of Afghanistan, yes, that's correct.

19 Q. You testified earlier today the first recorded meeting
20 between Mo and the defendant was in July 2014, correct?

21 A. I testified the first meeting that I tasked Mo to record
22 that Mo recorded was in July.

23 Q. Now, did you -- we just played a recording. Does it
24 reflect the conversation you've written down in that
25 memorandum?

Minichello - Cross

299

1 A. Not necessarily. The information, though, is similar from
2 what they sound on the recording.

3 Q. What's the date of your memorandum?

4 A. On this memorandum?

5 Q. Yes.

6 A. The one we discussed that didn't have a date?

7 THE COURT: Did you become aware that at some point,
8 Mo was recording conversations that you or the FBI had not
9 directed him to record?

10 THE WITNESS: There was a point that that happened,
11 yes, Your Honor.

12 THE COURT: When did that happen?

13 THE WITNESS: That was before this time frame. I
14 can't remember the exact date that it occurred, though, I'm
15 sorry.

16 THE COURT: I'm sorry, when did you find out that
17 that had happened?

18 THE WITNESS: I can't recall. It was before --
19 during April of 2014, I believe.

20 THE COURT: In April of 2014, you found out that Mo
21 had made some recordings?

22 THE WITNESS: I knew of one recording that Mo made
23 that he was not directed to make, but it was not of the subject
24 Nicholas Young.

25 MR. SMITH: Your Honor, if I may, may I continue the

Minichello - Cross

300

1 cross-examination?

2 THE COURT: We'll see. Go ahead. Let's move this
3 along.

4 MR. SMITH: Now, please play 14:40 again.

5 (Defendant's Exhibit No. 1 excerpt was played.)

6 MR. SMITH: Your Honor, this disc we're playing was
7 marked as the 5/31 meeting. It was a recording that the
8 government produced to us as reflecting a recorded meeting that
9 Mo conducted in May of 2014. That's what we're playing from.

10 Q. The highlighted passage from your memorandum,
11 Mr. Minichello, what does it read?

12 A. It reads, "Nick appeared to agree with Peshwaz and stated
13 that the Soviet invasion of Afghanistan was a legitimate
14 jihad."

15 Q. Now, the date of your memorandum is on the second document
16 I gave you, correct? The date you drafted the memorandum, as
17 opposed to when the meeting occurred.

18 A. Yes. Assuming these are the same, which they appear to
19 be, then the date drafted would have been 6 June 2014.

20 Q. That's before July 2014, correct?

21 A. It is, yes.

22 Q. Okay. So there were recordings. Mo did make recordings
23 before July 2014. Your testimony was incorrect, right?

24 A. Not necessarily. I don't recall that --

25 THE COURT: Mr. Smith, you've got to stop turning

Minichello - Cross

301

1 pages. We cannot hear you. We can't hear the witness, all
2 right?

3 Now, what was your answer to that question?

4 THE WITNESS: My answer to that question was I do not
5 recall a recording by Mo of the subject prior to that, though
6 this information does appear similar.

7 BY MR. SMITH:

8 Q. Is that a memorandum drafted by you, Mr. Minichello?

9 A. Yes, it is.

10 Q. What's the date you drafted the memorandum on?

11 A. The date listed here is June 9, 2014.

12 Q. And the meeting that the memorandum reflects between the
13 undercover informant and Nicholas is when?

14 A. It's June 5, 2014.

15 Q. Was this meeting recorded?

16 A. Not that I recall, no.

17 Q. The case agent originally believed it was recorded,
18 correct?

19 A. I do not know.

20 Q. Go to the *Jencks* statement that's in front of you,
21 JKS2-001342. It's the e-mail from March 24, 2016, from Agent
22 Caslen stating the total number of unrecorded meetings?

23 A. Oh, that one. Well, no, it says, "it looks like."

24 Q. "It looks like."

25 And on the March 23, 2016, e-mail you have in front

Minichello - Cross

302

1 of you from Agent Caslen, he states that he was going to speak
2 to you about the number of unrecorded meetings, correct?

3 A. In the March 23 e-mail, it does.

4 Q. Yes. And then on March 24, Mr. Caslen says there are four
5 unrecorded meetings, correct?

6 A. No. Mr. Caslen says it looks like there were four.

7 Q. It looks like there are four. Is one of those four
8 June 5, 2014?

9 A. Yes, it is.

10 Q. Now, Mr. Minichello, you've testified that it was
11 Mr. Young's idea to set up an e-mail account with the
12 undercover informant, Mo, to speak once the undercover
13 informant, Mo, pretended to go to Syria, correct?

14 A. I did, yes.

15 MR. SMITH: Can you give me October 10, 2016?

16 And go to 1 hour, 17 minutes -- excuse me, go to 58
17 minutes.

18 (Excerpt of audio was played.)

19 MR. SMITH: You were supposed to go to 10-16-2014, 58
20 minutes. 10-16-2014, 58 minutes. Thank you.

21 (Excerpt of audio was played.)

22 THE COURT: All right, we're stopping this.

23 Ladies and gentlemen, I'm going to let you get your
24 lunch break early today, all right? We're going to be on
25 break. I'd like you back here promptly at -- it's now 12:30.

Minichello - Cross

303

1 I want you back here at 1:30, please, for lunch, all right?
2 We'll stay in session.

3 (Jury out.)

4 THE COURT: Now, there are three problems with what
5 is happening right now. The point you're trying to make is a
6 legitimate point, but it's not being made well, and I do not
7 want -- it's confusing the jury to put on this kind of
8 evidence.

9 First of all, with tapes, there's normally a
10 transcript which helps the jury in listening to them. These
11 are almost indecipherable; that's number one.

12 Number two, I have told you, Mr. Smith, these are
13 very sensitive microphones. What you've got is a strip
14 microphone on the lectern. Every time you move your papers, it
15 is picked up. It is making it -- I'm sure my court reporter is
16 going crazy -- almost impossible to hear. So you're
17 undercutting your own presentation by continuing to rattle your
18 papers.

19 Number three, your paralegal is not getting these
20 tapes properly timed or coordinated such that we're getting
21 right to it. We will not -- I will not permit this kind of
22 long delay or listening to static or conversations that are
23 indecipherable. You've got to work it out. That's why we're
24 breaking now for lunch, all right? Get it worked out.

25 But you cannot continue to rattle your papers at the

Minichello - Cross

304

1 podium, all right?

2 MR. SMITH: Your Honor, I apologize for rattling the
3 papers, but I'd just like to address the timing issue.

4 THE COURT: No, you don't need to. We're recessing
5 court. We'll see you back here after the lunch break.

6 (Recess from 12:37 p.m., until 1:30 p.m.)

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Minichello - Cross

305

1 A F T E R N O O N S E S S I O N

2 (Defendant present, Jury out.)

3 THE COURT: All right, Mr. Smith, how much longer do
4 you think your cross is going to take?

5 MR. SMITH: I think about --

6 THE COURT: On your feet, please, at the lectern.

7 MR. SMITH: Your Honor, I think it will be about 15
8 to 20 minutes, but it's going to be sped up because we're going
9 to -- we've marked a bunch of exhibits so that Mr. Minichello
10 can go through them in order chronologically.

11 THE COURT: All right.

12 MR. SMITH: And then the remaining documents we're
13 going to show Mr. Minichello are marked with Bates stamps so
14 that we can quickly go to the correct page.

15 THE COURT: All right. For all future witnesses
16 starting tomorrow, you need to make sure you've got your
17 documents in a binder. You give them to the witness at one
18 time, and that way we don't have this back-and-forth.

19 MR. SMITH: I understand. And if I may, I'd like to
20 make one point about the recordings, and this will hold through
21 for the rest of trial probably. There are -- produced to the
22 defense in discovery were hundreds and hundreds of hours of
23 recorded conversations, maybe multiplying that is not correct.
24 Hundreds of hours of conversations. And sometimes the
25 undercover informant was wearing a wire for the entire day, so

Minichello - Cross

306

1 it will be five-six hours.

2 So the defense has had to, to find arguably *Brady*
3 material, pick through hours and hours and hours of
4 conversations, and try to isolate select moments that are
5 relevant to the defense in this case.

6 The defense has spent countless hours trying to
7 isolate specific moments in which the defendant can be heard
8 speaking to the informant. The recordings are faint. It's
9 occasionally very difficult to understand the defendant unless
10 the listener is wearing headphones. So we would just ask the
11 Court's patience in -- when we play certain recordings, it
12 might not be the exact moment at which the relevant comment is
13 made, but it will be made within a matter of moments.

14 THE COURT: For purposes of the record, you have to
15 have the specific excerpts that you're going to use on one
16 disc. We're not going to send down to the Court of Appeals,
17 should this case go that way, the entire disc.

18 And the second problem you've got with doing it this
19 way is without transcripts, it's almost impossible to hear
20 them. Now, we're not going to play them four or five times for
21 the jury. This was, you know -- both sides' obligation is to
22 produce the evidence in a format that the jury will be able to
23 without too much difficulty understand.

24 So we've got to get this case moving. We are under a
25 tough time period, but anyway --

Minichello - Cross

307

1 MR. SMITH: And just, Your Honor, for the record, so
2 on the transcripts point, which is an excellent point, the
3 problem with the transcripts of the recordings that were
4 produced by the government is twofold. They don't themselves,
5 the memoranda that summarize the recordings don't purport to be
6 exhaustive, so the agents will accurately represent that they
7 listened to this recording, but they're not purporting to
8 represent every single minute in the conversations.

9 So one problem is the transcripts don't cover all of
10 the relevant what we think is *Brady* material.

11 THE COURT: You do that on cross. But anyway, the
12 government will have transcripts for the tapes you're going to
13 play?

14 MR. GIBBS: That's correct, Judge.

15 THE COURT: All right. And you have them in one
16 book, the way is our normal practice here?

17 MR. GIBBS: I believe we do. I think what we'll
18 do -- and, in fact, Judge, I want to let the Court know Mo is
19 the next witness. He would have a number of clips, so we
20 would -- our thinking was to provide all the discs to him to
21 identify, move into evidence, and then play them sequentially,
22 and so I believe when you say they're all in the same book, I
23 think Mr. Vera is actually going to pull all the clips -- all
24 the discs out and have them all there on the witness stand so
25 we can go through them one by one.

Minichello - Cross

308

1 THE COURT: But in terms of listening to them, do you
2 have the transcripts for each one of those clips available?

3 MR. GIBBS: We do, Judge.

4 THE COURT: And they should be in one book. What we
5 tell the jurors is, you know, turn now to tab 4, tab 7, or
6 tab 9.

7 MR. GIBBS: Correct, Judge. So we -- all the discs
8 are numbered, and the transcripts are that same number with the
9 -T on it.

10 THE COURT: All right. All right, let's bring the
11 jury in.

12 MR. SMITH: Just one --

13 (Jury present.)

14 THE COURT: All right, folks, I hope you had a good
15 lunch. We're going to try to make sure that things get moving
16 a little bit faster now, all right?

17 Mr. Smith?

18 MR. SMITH: Your Honor, I've marked several exhibits
19 as Defense Exhibit 2, Defense Exhibit 3, Defense Exhibit 4,
20 Defense Exhibit 5, Defense Exhibit 6 and 7. Some of these
21 documents are documents that I was reviewing with Agent
22 Minichello before we took a break, but now they are marked and
23 in chronological order so that we can discuss them with Agent
24 Minichello in order.

25 BY MR. SMITH:

Minichello - Cross

309

1 Q. Good afternoon, Agent Minichello.

2 A. Good afternoon, sir.

3 Q. There is a document in front of you marked Defense
4 Exhibit 2. Do you see that document? There's a yellow sticky
5 note on the front that says DX-2.

6 A. Oh, I see, DX-2. It's got a little 1 underneath it?

7 Q. Yes.

8 A. Okay.

9 Q. Is that a memorandum that's drafted by you?

10 A. Yes.

11 Q. What is the date of your memorandum draft?

12 A. It's dated 6 June 2014.

13 Q. Okay. And does it reflect a meeting that the undercover
14 informant alleged he had with Mr. Young on a certain date in
15 May? If you look near the top of the memorandum, there should
16 be a date in May.

17 A. Yep. I'm sorry, I see it. Just let me look through it
18 real quickly.

19 Yes, that is correct.

20 Q. And which date is that on the memorandum?

21 A. The date listed there is May 22, 2014.

22 Q. Now, you're testifying today that there was no recording
23 of the undercover informant Mo's alleged meeting with Nicholas
24 on May 22, 2014; is that correct?

25 A. I testified that Mo did not make a recording of that

Minichello - Cross

310

1 meeting on May 22, 2014.

2 Q. Right. And you testified that Mo to the best of your
3 knowledge did not make any recordings in his meetings with
4 Nicholas Young until July 2014; is that correct?

5 A. That is correct.

6 Q. Okay. So there is no recording for this meeting on
7 May 22, which is reflected in the memorandum DX-2 in front of
8 you?

9 A. I can testify that to my knowledge, Mo did not make a
10 recording of that, correct.

11 Q. Now, in your memo, do you reflect that Mo had a
12 conversation with Nicholas Young about ISIS in DX No. 2 in the
13 memo in front of you?

14 A. I do not see a mention of ISIS in this report.

15 Q. You do not see a mention --

16 THE COURT: This is the last time we're going to do
17 this. If you're asking him to read reports and say something
18 that is or isn't in it, it just can't go like this.

19 All right, he said there was -- your answer was no.

20 THE WITNESS: Correct.

21 MR. SMITH: Your Honor, this is going to go quickly.

22 Q. Do you see a document marked DX-3 in front of you?

23 A. I do, yes.

24 Q. Now, does -- what's the date of the memorandum?

25 A. That memorandum is dated 6 June 2014.

Minichello - Cross

311

1 Q. Okay. Did you draft that memorandum?

2 A. Yes.

3 Q. Now, there's no date of the alleged meeting that this
4 memorandum reflects between Nicholas Young and Mo in that
5 memorandum, correct? The memorandum purports to summarize a
6 meeting between Nicholas Young and the undercover informant,
7 Mo, but there is no date of the meeting in that memorandum,
8 correct?

9 A. Let me check. That's correct.

10 Q. Now, there's a paragraph that we were reading in the
11 earlier session about the Soviet invasion of Afghanistan. Can
12 you find that paragraph? I think it's on the second page of
13 DX-3.

14 A. Let me look.

15 Q. It begins, "Nicholas appeared to agree that the Soviet
16 invasion of Afghanistan was a legitimate jihad."

17 A. Here we go. Third page, I have it.

18 Q. Can you read that sentence, please?

19 A. Yes. "Nick appeared to agree with Peshwaz, who stated
20 that the Soviet invasion of Afghanistan was a legitimate
21 jihad."

22 MR. SMITH: Okay. Please play the recording, please,
23 at 3 minutes, 40 seconds.

24 (Audio excerpt was played.)

25 MR. SMITH: Stop it.

Minichello - Cross

312

1 Q. Is that voice not Mr. Young saying that the rebels against
2 the Afghanistan government are not jihad; they are criminals?
3 Did you, did you understand that from the recording?

4 A. I can't recall that specific bit.

5 Q. Yeah. Do you think that that conversation, that clip we
6 just played is the same clip that you're -- is the same portion
7 of conversation you're purporting to summarize in the June 6
8 memo marked DX-3?

9 A. No. I mean, the information is similar. It talks about
10 the Soviet invasion of Afghanistan.

11 Q. So you are agreeing that you are purporting to reflect the
12 conversation we just listened to on the recording in the
13 memorandum in front of you marked DX-3?

14 A. No. I'm saying that they have the same information in
15 them.

16 Q. Okay. Can you turn to DX-4, please?

17 Now, you've testified today that the first recorded
18 conversation between the informant and Nicholas Young was in
19 July 2014, correct?

20 A. The first recording that Mo made of this subject, Nicholas
21 Young, defendant now, was in July.

22 Q. And so you're testifying that what we just heard was not a
23 recording between Nicholas Young and the undercover informant
24 in May 2014; is that correct?

25 A. I'm testifying that I did not task the, Mo to make a

Minichello - Cross

313

1 recording of that conversation.

2 Q. I'm not asking whether you tasked him. I'm asking --

3 THE COURT: You need to let the witness finish.

4 You're cutting him off.

5 BY MR. SMITH:

6 Q. Mr. Minichello, I'm not asking whether you tasked Mo with
7 recording a conversation between Young and himself in May 2014.
8 I'm asking whether the clip we just listened to, as reflected
9 in your memorandum dated June 6 and marked DX-3, is a
10 conversation between Mr. Young and Mo in May of 2014.

11 A. And I can't speak to the veracity of that, whether or not
12 it is, in fact, that conversation.

13 Q. Were you the handler agent for Mo in this case?

14 A. At that time? Yes.

15 Q. Yes. Because you drafted a memo dated June 6, 2014,
16 correct?

17 A. That's correct, yes.

18 Q. Yes. So are you representing today that you do not
19 recognize Mo's voice?

20 A. I -- as I testified earlier, that does sound like Mo in
21 that recording.

22 Q. Are you -- now, as Mo's handler, would you often hear
23 Nicholas Young's voice on recordings that Mo made?

24 A. Yes.

25 Q. Do you recognize Nicholas Young's voice?

Minichello - Cross

314

1 A. It does sound similar to Nicholas Young, yes. I'm not
2 trying to evade that. I just can't --

3 Q. Right. The clip we just listened to sounds like Mo
4 speaking to Nicholas Young, correct?

5 A. It sounds very similar, yes.

6 Q. And it sounds like the conversation you were recording in
7 a memorandum dated June 6, 2014, correct?

8 A. The information that is in that memorandum sounds very
9 similar to that conversation that we heard in that recording,
10 yes.

11 Q. So when you testified earlier that the first recording
12 that was made between the informant and Nicholas Young was July
13 2014, that was probably incorrect, correct?

14 A. No, that is incorrect. I testified that the recording
15 that -- the first time that I tasked Mo to make a recording of
16 Nicholas Young, the first recorded conversations that I tasked
17 Mo to make were in July.

18 THE COURT: Excuse me, what you're saying then is
19 apparently Mo made one or two unauthorized recordings? Isn't
20 that what you're saying? You start the official request from
21 the FBI to record in July.

22 THE WITNESS: Yes, although I'm not -- I'm also not
23 testifying this particular recording is made by Mo of the
24 subject. It does sound like it is a conversation between the
25 two, yes, in May.

Minichello - Cross

315

1 THE COURT: All right, that's the answer. We've been
2 over this several times.

3 THE WITNESS: So I don't mean to be obfuscating. It
4 just --

5 BY MR. SMITH:

6 Q. Okay. Please turn to DX-5, please. Is this a memorandum
7 you drafted?

8 A. Yes, it is.

9 Q. Does it have a date that purports to reflect a meeting
10 between Mo and Nicholas Young, Mo the informant and Nicholas
11 Young?

12 It's near the top. Does it say June 29, 2014?

13 A. I see the date. I'm just making sure that --

14 Q. Okay.

15 A. -- what you're asking for is what's in the reporting.

16 Yes, it looks like on June 29, 2014, he had a meeting
17 with Nick --

18 Q. Does it appear that the -- does the -- did Mo represent to
19 you that he had a conversation with Nicholas Young on June 29
20 about ISIS?

21 A. Let me check.

22 Yes.

23 Q. Do we have any reason to believe that this is not the
24 first occasion in which you recorded in a memorandum that
25 Mr. Young had a conversation about ISIS with the informant, Mo?

Minichello - Cross

316

1 A. I'm sorry, could you restate the question?

2 Q. Do you have any reason to believe that this memorandum
3 you're holding marked DX-5 is not the first occasion in which
4 you drafted a memorandum representing that the informant, Mo,
5 told you he had a conversation with Mr. Young about ISIS?

6 A. Not that I can recall, no.

7 Q. You have no reason to believe that this is not the first
8 alleged occasion in which Mo discusses ISIS with Nicholas
9 Young, correct?

10 A. I'm sorry, I -- could you rephrase the question?

11 Q. You're the case agent -- the agent handler for Mo, the
12 informant, correct?

13 A. Yes, absolutely.

14 Q. So you are familiar with the recorded history of
15 conversations between Mo and Nicholas Young, correct?

16 A. Yes.

17 Q. Do you have any reason to believe based on your knowledge
18 as agent handler for Mo that there was any recorded
19 conversation or memorialization of Mo's alleged conversations
20 with Nicholas about ISIS before this date, June 29?

21 A. I have no reason to believe that Mo recorded any
22 conversations with Nicholas Young about ISIS before this date.

23 Q. Thank you. This meeting is not recorded, correct?

24 A. Not to my knowledge.

25 Q. Go to DX -- look down in DX-5. There's a second date,

Minichello - Cross

317

1 July 6, below the June 29 date.

2 Do you see July 6? It's in the same exhibit marked
3 DX-5.

4 A. Yep, I'm just going through it. I don't see a date.
5 Stand by.

6 Q. It's about midway, you have to go down the page.

7 A. 6 July?

8 Q. Yes.

9 A. Sorry.

10 Q. So this purports to be a memorialization of a meeting
11 between the informant, Mo, and Nicholas, correct?

12 A. Yes.

13 Q. On July 6?

14 A. It does.

15 Q. Okay. Now, does it say whether Mo alleged he had a
16 conversation with Nicholas Young about ISIS? It does, doesn't
17 it?

18 A. I have to read it, I'm sorry.

19 Q. Okay.

20 A. Please stand by.

21 Q. I'm not asking you for content. If you just find the word
22 "ISIS" and see that it alleges that Mr., Mr. Young had a
23 conversation with Mo about ISIS, that's all you need to
24 confirm.

25 A. Well, I see the comment -- I see the term "ISIS" --

Minichello - Cross

318

1 Q. Yes.

2 A. -- but as it reads, it doesn't necessarily say they had a
3 conversation about it in the first section.

4 Q. What does it say?

5 A. Do you want me to read the paragraph?

6 Q. Please.

7 A. Okay. "CHS attended prayer" --

8 THE COURT: Slow down and louder, please.

9 THE WITNESS: Sorry, Your Honor. "CHS attended
10 prayer at Sully Adams on 6 July 2014. CHS met with Young and
11 T.J. in line for food prepared for breaking the day's FSA.
12 Young asked what they thought" -- it's a misspelling -- "about
13 the recent developments with ISIS. T.J." --

14 BY MR. SMITH:

15 Q. Stop. You just read that Young asked about the recent
16 developments with ISIS, correct?

17 A. Yes.

18 Q. So this memorandum purports to reflect that the undercover
19 informant, Mo, had a conversation with Nicholas Young about
20 ISIS on July 6, correct?

21 A. Well, no. It says that Young asked their opinion on it.
22 It does not talk --

23 Q. They had a conversation about ISIS according to Mo,
24 correct?

25 A. Well, I hadn't gotten that far yet. It says that Young

Minichello - Cross

319

1 asked him about it. I don't know whether they had the
2 discussion or not.

3 Q. It says that Young asked about ISIS on July 6, correct?

4 A. Yes, correct.

5 Q. This meeting is not recorded, correct?

6 A. Not to my knowledge, no.

7 Q. Okay. So we've -- so in DX-5, we have June 29 and July 6.
8 On both of those dates, you memorialize that Mo represented to
9 you he had a meeting with Nicholas Young and discussed ISIS on
10 both of those dates, correct?

11 A. That he met with Nicholas Young and in a second meeting,
12 yes, Young asked him about the recent developments --

13 Q. And you're testifying you have no reason to believe these
14 are not the first memorializations by you of alleged
15 conversations between Mo and Nicholas Young about ISIS,
16 correct?

17 A. I don't recall previous memorializations to that effect.

18 Q. Okay. They're both not recorded, right?

19 THE COURT: That's been asked and answered. Let's
20 move on.

21 BY MR. SMITH:

22 Q. Please go to DX-6, please. Do you see this memorandum was
23 drafted by you, correct?

24 A. Yes, that's correct.

25 Q. What date does it purport to reflect in a meeting between

Minichello - Cross

320

1 the informant, Mo, and Nicholas Young?

2 A. The day of the meeting?

3 Q. Yes.

4 A. The first section is unclear.

5 Q. Do you see July 13 --

6 A. Then there's a second section --

7 Q. Do you see July 13, the day July 13 in the document marked
8 DX-6?

9 A. I see that date listed, yes.

10 Q. And does this purport -- did you draft this memorandum?

11 A. Yes.

12 Q. Does it purport to represent that Mr. Young had a
13 conversation with Mo about ISIS?

14 A. Let me see.

15 Q. You just need to look for the word "ISIS," and then you
16 can let me know what it says.

17 A. Okay. Sorry, it wasn't highlighted. I'm going to read
18 through to make sure I don't miss something.

19 Q. Okay.

20 THE COURT: No, we're not taking time for people to
21 read.

22 MR. SMITH: This is the last step, Your Honor.

23 THE COURT: This has got to be the last one. This is
24 taking too much time.

25 MR. SMITH: There is one more document after this.

Minichello - Cross

321

1 THE COURT: No, there will not be another one like
2 this. It's taking too long.

3 MR. SMITH: Your Honor, it's not like this.

4 THE COURT: Let's move this.

5 THE WITNESS: Sorry, Your Honor.

6 THE COURT: Ask the question; let's get the answer.

7 MR. SMITH: I'm just waiting for the --

8 THE COURT: We want the answer, Agent.

9 BY MR. SMITH:

10 Q. I asked the agent whether on July 13, Mo represented to
11 you that he had a conversation about ISIS with Nicholas Young.

12 A. Yes. Mo represented that he had a meeting with Nicholas
13 Young on July 13, and then the second paragraph, it says that
14 Young said that at this point, with the khalifa being declared
15 by ISIS -- IS is Islamic State -- if another person tries to
16 declare khalifa, they should kill him.

17 Q. Okay. So we've just discussed DX-5 and DX-6. DX-5
18 includes dates June 29, 2014 --

19 THE COURT: That's repetitive. Let's move on.

20 MR. SMITH: Your Honor -- okay.

21 Q. Please turn to the document marked DX-7. This is the
22 final document we're reviewing on this subject. It's a series
23 of e-mails in March 2016. Do you see DX-7?

24 A. I do.

25 Q. Can you please turn to -- there's *Jencks* Bates stamps at

Minichello - Cross

322

1 the bottom of the page that begins JKS. Do you see those JKS
2 letters?

3 A. I do, yes.

4 Q. Do you see JKS, the last digits are 001275? 1275.

5 A. Here it is.

6 Q. Do you see the e-mail on March 23, 2016, from Agent
7 Caslen?

8 A. I do, yes.

9 Q. He says -- read it to me, please.

10 A. Just the body?

11 Q. Just the body of the e-mail.

12 A. It says, "I think the first one or two were (sic)
13 recorded. I will get in touch with Cam and a former handler to
14 get the specifics of how many."

15 Q. Now, you can't testify to what Mr. Caslen was thinking,
16 but this e-mail represents that he reached out to you about the
17 "one or two" that's referenced in the e-mail, correct? "I
18 think the first one or two weren't recorded"; is that what you
19 said?

20 A. That's what that read, and it indicates that he may have
21 had the intention of reaching out to both Cam and myself.

22 Q. Okay. Please turn to *Jencks* page No. 001342.

23 A. Sorry.

24 Q. 001342.

25 A. Yep. Sorry. I'm just making -- okay. I have it here.

Minichello - Cross

323

1 Q. Do you see the e-mail on March 24, 2016, from Caslen?

2 A. Yes.

3 Q. So this e-mail is after the first e-mail we reviewed on
4 March 23, 2016, correct?

5 A. That would make sense, yes.

6 Q. Okay. And what does the March 24, 2016, e-mail from Agent
7 Caslen say?

8 A. The body reads, "It looks like there were four meets that
9 weren't recorded," then it lists the dates, which are May 31,
10 2014; June 5, 2014; June 9, 2014; and July 12, 2014.

11 Q. Okay. So two new dates have been added to the, to the
12 e-mail we reviewed on March 23, correct? Mr. Caslen first says
13 one or two meetings are not recorded on March 23. He says he's
14 going to speak to the former handler about it. That's you,
15 right?

16 A. Correct, yes.

17 Q. Then on March 24, Mr. Caslen says there are four meetings
18 that are not recorded?

19 A. That's correct.

20 Q. Now, finally turn to *Jencks* 001273.

21 A. 127, I'm sorry, what was the last number?

22 Q. 001273.

23 A. 1273.

24 Q. Yeah.

25 A. Okay.

Minichello - Cross

324

1 Q. Do you see an e-mail from -- it begins on the, maybe the
2 page before, 001272. It's an e-mail dated March 29, 2016.
3 There's a whole bunch of redactions in it, continuing to the
4 next page, but on page *Jencks* No. 001273, do you see a line
5 that says, that adds two more unrecorded dates, unrecorded
6 meetings between -- alleged unrecorded meetings between
7 Mr. Young and the informant, Mo?

8 You'll see a date, June 29, about midway through the
9 page?

10 A. Okay. I see where you're talking about.

11 Q. Okay. So what does that unredacted line say?

12 A. It said, "Recordings were not conducted during the
13 meetings on June 29, 2014, or July 13, 2014."

14 Q. Okay. So we started on March 23, the e-mail from
15 Mr. Caslen we just reviewed saying there are one or two
16 meetings that are not recorded. He says he's going to speak to
17 you. The next e-mail is dated March 24. He says there are
18 four unrecorded meetings. Then the final e-mail on March 29
19 says there are two additional unrecorded meetings. This is
20 within the span of five days, correct?

21 A. Part of that's correct, yes.

22 Q. Okay.

23 A. It doesn't say there were two additional dates, but it
24 does list two additional dates.

25 Q. Now, on March 29, 2016, one of the additional dates that

Minichello - Cross

325

1 was added was June 29, 2014, correct?

2 A. That e-mail indicates that there was no meeting during the
3 meeting on June 29, 2014.

4 Q. That e-mail indicates there was no recorded -- there was
5 no record -- there was no recorded wire of the meeting on June
6 29?

7 A. It says recordings were not conducted.

8 Q. Recordings were not conducted.

9 Now, you recall that you agree that June 29, 2014, to
10 the best of your knowledge, is the first recorded time,
11 instance in which the informant, Mo, allegedly had a
12 conversation with ISIS about Mr. Young, correct?

13 A. No.

14 Q. You testified earlier that --

15 A. I don't believe so. Say that again. Maybe I missed it.

16 Q. You testified earlier that June 29, 2014, there was a
17 meeting between Mr. Young and the undercover informant,
18 correct? That's DX No. 5?

19 A. I thought you said recording. I apologize, go ahead.

20 Q. There was a meeting -- you say there was a meeting on
21 June 29, 2014. That's DX-5?

22 A. Yep.

23 Q. And you agreed that to the best of your knowledge, as
24 agent handler in this case, you're aware of no previous
25 memorializations of Mr. Young allegedly having a conversation

Minichello - Cross

326

1 about ISIS with Mo, correct?

2 A. Before the June 29 date.

3 Q. Before the June 29 date.

4 A. I don't recall any, no.

5 Q. You testified earlier that you have no reason to believe,
6 there were no earlier memorializations earlier than June 29,
7 2014, reflecting an alleged conversation about ISIS between
8 Nicholas Young and Mo?

9 MR. GIBBS: Judge, if he testified to that before,
10 it's asked and answered.

11 THE COURT: Sustained.

12 MR. GIBBS: Thank you.

13 BY MR. SMITH:

14 Q. Mr. Minichello, I'd like to talk to you about compensation
15 of the informant, Mo. So you've testified he was paid over
16 \$30,000 to report on Nicholas, correct?

17 A. Yes, that's correct.

18 Q. And he was compensated, Mo, for results, correct?

19 A. He was compensated for a number of things. Usually we pay
20 sources, as we did in the case of Mo, for expenses incurred, if
21 they have any during the course of their operations, as well as
22 for the services rendered, their time spent, activities that
23 they conduct in our behalf. We compensate them for that.

24 Q. So was the compensation tied to performance evaluation in
25 any respect?

Minichello - Cross

327

1 A. No, not necessarily. We will discontinue sources if we
2 feel that they are not performing.

3 Q. You instructed Mo that he would be paid for results in
4 discussing ISIS with Nicholas, correct?

5 A. No, I don't recall that.

6 Q. No? You instructed Mo to raise the subject of ISIS with
7 Nicholas?

8 A. I don't recall the exact task we related to that. We, I'm
9 sure, would have instructed him that if the subject came up, it
10 would be of interest to us.

11 Q. If the subject came up, it would be of interest to you,
12 but did you instruct Mo to raise the subject of ISIS with
13 Nicholas?

14 A. I can't remember the exact time I would have done that.
15 It's possible, though.

16 Q. It's possible.

17 You testified earlier that Mo began recording
18 conversations without you instructing him to. When was that?

19 A. Prior to his being tasked to engage Mr. Young, he had
20 conducted a recording untasked by us of a meeting with some
21 other subjects.

22 Q. And did you investigate?

23 A. I'm sorry, I don't understand.

24 Q. When did you find out that Mo was recording conversations
25 without your instructing him to?

Minichello - Cross

328

1 A. There's only one instance, and I can't remember the exact
2 date, but it was before he was tasked as Mr. Young.

3 Q. So when you found out that he was recording conversations
4 without instructing him to, did you investigate why Mo was
5 doing that?

6 A. Well, there wasn't any need to investigate it. Mo told us
7 that he had conducted a recording. It's not illegal to do that
8 by any means. We prefer that sources use FBI devices for
9 recording purposes because they are controlled, we can attest
10 to their veracity after the fact, but it's by no means criminal
11 for him to have done so.

12 So after we determined that it occurred, after the
13 source told us, "Hey, I made a recording," we instructed him
14 not to do that in the future and to only do task recordings for
15 us.

16 Q. So you testified that Nicholas first met Mo in May 2014,
17 correct, to the best of your knowledge?

18 A. Yes.

19 Q. But he was -- Nicholas Young was a subject of interest to
20 the Counterterrorism Division of which you are a part before
21 May 2014, correct?

22 A. Yes, he was.

23 Q. Mr. Young met the undercover agent, Khalil, in December
24 2010, correct?

25 A. I don't recall.

Minichello - Cross

329

1 Q. A counterterrorism investigation into Nicholas was opened
2 in September 2010, correct?

3 A. I can't remember the exact date.

4 Q. In 2010, it was opened?

5 A. I can't recall. I believe that's accurate, but I can't
6 recall the exact date.

7 Q. Okay. Before Mr. Young met the undercover informant, Mo,
8 he had traveled to Libya in 2011, correct?

9 A. I know that Mr. Young had traveled to Libya. I do not
10 know the dates of that.

11 Q. But the Bureau understood, the counterterrorism section
12 understood that Mr. Young had traveled to Libya in 2011,
13 correct, before he met Mo?

14 A. I can't attest to the dates, but yes, he had traveled to
15 Libya. I was aware of that.

16 Q. The Bureau understood that Mr. Young carried a firearm
17 routinely as a part of his work with Metro Transit Police,
18 correct?

19 A. I believe that's accurate, yes.

20 Q. They understood these facts between 2011 and May 2014,
21 when Mo first met Nicholas, correct?

22 A. Yes.

23 Q. Did you instruct Mo to meet Nicholas, encounter Nicholas,
24 and report on Nicholas at any point before May 2014?

25 A. I don't recall. I don't believe so. That meeting

Minichello - Cross

330

1 occurred not at our direction, as I recall. I don't believe I
2 tasked him to meet with --

3 Q. Well, you testified to the best of your knowledge, the
4 first time Mr. Young met the informant, Mo, was in May of 2014,
5 correct?

6 A. Correct. I can't see why I would have tasked him to do
7 that.

8 Q. You did not -- you did not task Mo to report on Nicholas
9 at any point between 2010, when the investigation opened, and
10 2014, correct?

11 A. I do not recall, no.

12 Q. Now, the Bureau understood that Mr. Young made a second
13 trip to Libya in September 2011, correct? There was one trip
14 in May of 2011. There was a second trip in September of 2011,
15 correct?

16 A. I'm sorry, I cannot attest to those dates.

17 Q. After Mr. Young returned from Libya, the Bureau attempted
18 to recruit Nicholas as an undercover informant, correct?

19 A. I can't attest to that either.

20 Q. You don't know whether Mr. Young was recruited as an
21 undercover informant?

22 A. I'm sorry?

23 Q. You don't know whether Mr. Young was recruited by the
24 Counterterrorism Section as an undercover informant?

25 A. To my knowledge, he was not recruited as a CHS.

Minichello - Cross

331

1 Q. He was not?

2 A. Correct.

3 Q. Okay.

4 THE COURT: Ladies and gentlemen, I do want you to be
5 aware that when the lawyers make a statement of fact in a
6 question, if the witness says, "I don't remember," "I can't
7 recall," or "I don't know," the lawyer's question is never
8 evidence. It's only the answer that a witness provides that's
9 the evidence, so be very careful in understanding the
10 difference between that.

11 MR. SMITH: I'm keeping the papers off the lectern
12 here so I don't -- okay.

13 Q. I'm handing up a document that we will mark as Defense
14 Exhibit 8.

15 A. Thank you, sir.

16 Q. Now, that's a, what you call a 302 memo, right?

17 A. It is, yes.

18 Q. What's a 302 memo?

19 A. It is a document that reports factual information to the
20 best of our knowledge that we've recorded through an interview
21 or other means -- other investigative activities we conduct in
22 the FBI.

23 Q. Okay. So before you review this document, you've
24 testified, to be clear, that you were unaware that the
25 Counterterrorism Section has attempted to recruit Mr. Young as

Minichello - Cross

332

1 an informant?

2 A. Correct.

3 Q. Okay. What is the date on that 302?

4 A. It is dated September 29, 2011.

5 Q. Okay. Can you turn to the last page of the memorandum?

6 Excuse me, first tell me, what agent was interviewing Mr. Young
7 on September -- well, what is the agent's name at trial?

8 A. I'm sorry, I don't understand the question.

9 THE COURT: Wait, wait, wait, wait, wait.

10 MR. GIBBS: Can we approach?

11 THE COURT: Yes.

12 (Bench conference on the record.)

13 MR. GIBBS: Judge, I believe that the answer is going
14 to be one of the FBI witnesses whose identity is protected, but
15 I'm not -- I mean, I think at a minimum, he needs to be asked
16 as a leading question, but this is a document from 2011 that he
17 didn't author. I'm not quite sure where we're getting with
18 the --

19 THE COURT: You need to ask him has he ever seen that
20 document before. He's already testified he doesn't know. His
21 involvement appears to be from 2014 on. You cannot let this
22 name get revealed, so I think this line of questioning should
23 stop. You should be able to get this from another witness.

24 MR. SMITH: Okay. Well, it might depend, Your Honor,
25 depending on -- we don't know exactly who's going to testify

Minichello - Cross

333

1 for the government. We have never received a witness list.

2 THE COURT: You've got a list right here.

3 MR. SMITH: The government actually refuses to give
4 us an exhibit list.

5 MR. KROMBERG: I provided the names directly to
6 Ms. Moreno, and I announced it in open court yesterday for all
7 the world to hear.

8 THE COURT: All right, let's move this along. This
9 agent is not going to help you on this point.

10 MR. SMITH: Okay, okay. Fine.

11 THE COURT: By the way, you've got to let the witness
12 finish the answer. You're keeping him -- this transcript is
13 going to be a complete piece of garbage. You have to wait
14 until the witness finishes answering.

15 MR. SMITH: Sometimes I can't hear him, Your Honor.

16 THE COURT: I'm sorry?

17 MR. SMITH: Sometimes I can't hear him.

18 THE COURT: Well, then tell him to speak up. I've
19 been having problems, too, all right?

20 (End of bench conference.)

21 BY MR. SMITH:

22 Q. Mr. Minichello, you were Mo's agent handler, so you were
23 following the conversations that the informant, Mo, alleged he
24 had with Nicholas throughout the course of the investigation
25 while you were the agent handler for Mo, correct?

Minichello - Cross

334

1 A. That's correct, yes.

2 Q. Were you aware -- did you review any alleged
3 communications between Mr. Young and Mo in which Mo represented
4 that Nicholas had ever actually spoken to anyone in ISIS?

5 A. I'm sorry, could you repeat the question?

6 Q. In reviewing Mr. Young's alleged conversations with Mo
7 through recordings or through debriefings, did you ever come to
8 learn that Nicholas Young had ever spoken to anyone actually in
9 ISIS, any members of ISIS?

10 A. Sorry, I'm thinking. Give me a second.

11 I can't recall having any statements where he said he
12 had contacted somebody directly in ISIS.

13 THE COURT: Ladies and gentlemen, are any of you
14 having trouble hearing the witness?

15 (Jurors nodding heads.)

16 THE COURT: You are.

17 THE WITNESS: I'm sorry.

18 THE COURT: You've got to speak up. I don't know how
19 many times I have to say that, all right?

20 THE WITNESS: I keep trailing off. I apologize.

21 BY MR. SMITH:

22 Q. So you're unaware of the defendant ever actually speaking
23 to ISIS during the course of your investigation with Mo between
24 May of 2014 and August of 2016; is that correct?

25 A. That's correct.

Minichello - Cross

335

1 Q. So you continued to instruct Mo to discuss ISIS with
2 Nicholas Young when you had no information that he was speaking
3 to anyone in ISIS, correct?

4 A. That's correct.

5 Q. Now, you've testified about some e-mails that were sent
6 from someone pretending to be Mo in Turkey but who was not
7 actually Mo. It was an agent, correct?

8 A. No, incorrect. Those e-mail communications were a
9 collaborative effort between myself and Mo.

10 THE COURT: Agent, speak up.

11 THE WITNESS: That is incorrect. Those e-mail
12 communications were a collaborative effort between myself and
13 Mo, so to say that they were not from Mo is inaccurate.

14 BY MR. SMITH:

15 Q. Okay. So the first -- you've represented that the first
16 e-mail that was a collaborative effort between you and Mo to
17 Nicholas Young after Mo pretended to leave the United States on
18 October 25, 2014, was an e-mail dated October 27, 2014,
19 correct?

20 A. No. Mo did leave the country. We both traveled to
21 Turkey.

22 Q. No, no, I'm saying -- my question is you were representing
23 that the first communication for Mo to Nicholas Young after Mo
24 left the country -- after the person pretending to be Mo left
25 the country was dated October 27, 2014, correct?

Minichello - Cross

336

1 A. Okay. To be clear, Mo left the country, not pretending to
2 be Mo. Mo left the country, as did I, and --

3 Q. Well, his name is not actually Mo.

4 A. Understood. So just to be clear, yes, the person we're
5 talking about as Mo left the country with me, and then from
6 Turkey, we sent that first e-mail. The collaborative effort
7 that was that e-mail, we sent it back to Nicholas Young.

8 Q. Did Nicholas respond to that e-mail?

9 A. To the series of e-mails, yes, but there was a delay in
10 the time between that e-mail was sent and the time that he
11 replied.

12 Q. How long was the delay?

13 A. How long was the delay?

14 Q. Yes.

15 A. You know, I don't remember the exact date that he replied,
16 but I believe it was in December of 2014.

17 Q. So you wrote him an e-mail in October, after Mo left the
18 country, and he doesn't respond to it for three months, right?

19 A. Not three months, but there is a delay, yes, as I
20 discussed.

21 Q. Okay. So the process -- the process by which you created
22 these e-mails, you said initially it was collaborative between
23 yourself and the undercover informant, Mo. It was
24 collaborative for that October 27 e-mail from Turkey, right?

25 A. There were three e-mails that were done collaboratively

Minichello - Cross

337

1 with the source, the ones I discussed earlier.

2 Q. Right. But actually, the agents were all communicating
3 with each other by e-mail how to solicit Nicholas Young to
4 discuss ISIS, correct?

5 A. There were communications about how to solicit -- how to
6 deal with messages to Nicholas Young, as I recall, yes.

7 Q. And those solicitation communications were about the same
8 time that -- about the same time that you're e-mailing
9 Mr. Young about Mo being in ISIS, correct?

10 A. I don't recall which ones you're referring to, but if you
11 can point me to one?

12 Q. I will.

13 A. Thank you.

14 MR. SMITH: Here it is. All right.

15 I'm handing up a document marked Defense Exhibit --
16 the last one was 9, correct?

17 THE COURT: The last one was 8.

18 MR. SMITH: The last one was 8? So this will be
19 Defense Exhibit 9.

20 MR. GIBBS: Nick, can I take a look at it?

21 MR. SMITH: Do you want to take a look at it?

22 MR. GIBBS: Yeah.

23 Your Honor, we object to this line of questioning.

24 This goes back to the objection we had earlier about the
25 process of creating some of these e-mails. This appears to be

Minichello - Cross

338

1 a --

2 THE COURT: Is this agent-to-agent discussions?

3 MR. GIBBS: They are, but it's after Agent Minichello
4 left the squad, and he is not included in those communications.

5 THE COURT: I'll sustain the objection.

6 MR. GIBBS: Thank you.

7 THE COURT: Move on.

8 MR. SMITH: So if the defense understands correctly,
9 there will be an additional witness on the subject matter of
10 communications --

11 THE COURT: Let's move on. We're not asking
12 questions about the trial. Do you have any more questions for
13 this witness?

14 MR. SMITH: I do have one final list of questions
15 here.

16 Q. Now, Mr. Minichello, you learned from Mo on several
17 occasions that Nicholas Young was pushing back against Mo's
18 conversations about ISIS, correct?

19 A. No, but can you point me to a particular discussion that
20 you're referring to?

21 THE COURT: I'm sorry, this has to stop. You're
22 rattling your papers. You did it while you were asking the
23 question, which made it hard to hear, and you're doing it while
24 the witness is answering, all right? All right, ask the
25 question again.

Minichello - Cross

339

1 BY MR. SMITH:

2 Q. Mr. Minichello, there came a time when you learned from Mo
3 that Nicholas Young was pushing back against Mo's efforts to
4 discuss ISIS, correct?

5 A. I don't recall that, but if you can point me to a
6 particular document, I can --

7 Q. I will.

8 A. -- talk about it.

9 Q. I will. Didn't Mo tell you --

10 THE COURT: Jurors can't hear you again, Agent.

11 THE WITNESS: I apologize.

12 THE COURT: I don't know what to say.

13 THE WITNESS: I'm losing my voice. Sorry.

14 THE COURT: Lean right into that microphone, and
15 speak up.

16 THE WITNESS: Yes, ma'am.

17 BY MR. SMITH:

18 Q. On September 11, 2014, didn't you reflect that Nicholas
19 Young told Mo, "I saw Baghdadi's mug shot on the news, and I
20 was like, oh, they sound like a bunch of criminals who are
21 hungry for power and money"?

22 A. I don't recall.

23 Q. You don't recall ever hearing that comment? That doesn't
24 stick out in your mind?

25 A. It doesn't stick out in my mind. I'm not saying it didn't

Minichello - Cross

340

1 happen. I just don't recall to put it to a date.

2 Q. Specifically or you don't recall it ever having been said?

3 A. I don't recall. I'm sorry, I don't remember exactly that
4 comment, but I would have probably documented something like
5 that.

6 Q. So I'm going to hand up a document marked Defense
7 Exhibit -- is this 10?

8 THE COURT: Does the government need to see this
9 exhibit, or are you all right with it?

10 MR. GIBBS: Let me take a quick look. Is this the
11 transcript?

12 MR. SMITH: This is the transcript.

13 MR. GIBBS: Thank you, Judge.

14 THE COURT: All right.

15 BY MR. SMITH:

16 Q. That's a memorandum called the 1057 memorandum, correct?

17 A. That's correct, yes.

18 Q. And can you turn to page 12 of that memorandum? Well,
19 first, tell me, this is a reflection of a recording that was
20 made on September 11, 2014, correct?

21 A. Stand by. Let me take a look.

22 Q. Okay.

23 A. Sorry. If you know where I'm looking for that, feel
24 freely to steer me in the --

25 Q. Looking at page 12, there's a sticky note there that says

Minichello - Cross

341

1 "Baghdadi."

2 A. There are separate -- there are separate 1057s up here.
3 Which one are you referring to?

4 Q. The September 11, 2014, 1057, and it's on page 12 of that
5 document.

6 A. On the entire pile?

7 Q. Well, yeah. If you look at the bottom of the page, there
8 are page numbers, and it says page 12.

9 A. But there are duplicative page numbers, that's all. I'll
10 find it. Sorry.

11 Okay. Here's a page 12, and, I'm sorry, your
12 question was?

13 Q. Do you see where -- do you recall Mo informing you that
14 Mr. Young said on September 11, 2014, "I saw Baghdadi's mug
15 shot on the news, and I was like, oh, they sound like a bunch
16 of criminals who are hungry for power and money"? Do you
17 remember reviewing that, that recording?

18 A. Not in particular, but I'm sure it would have been
19 recorded and have a transcript done for it.

20 Q. Do you recall Mo telling you or listening to a recording
21 reflecting that Nicholas told Mo on September 11, 2014, if he
22 ever heard someone was going to blow up the subway, you need
23 Nicholas's help to stop them? Do you remember learning that?

24 A. No, I don't recall those particular events. Not that they
25 weren't recorded. I just don't recall them offhand.

Minichello - Redirect

342

1 Q. Did there come a time that you learned that Mo was having
2 a conversation with Nicholas on September 11, 2014, and when Mo
3 said he wanted to help militant Islam, Nick said, "Why now?"

4 A. I'm sorry, do you want me to reference the transcript and
5 tell you what was recorded or what I recall?

6 Q. Do you have any reason to believe --

7 A. I do not -- I want to be clear. I don't recall --

8 THE COURT: Stop. This is not proper. You're trying
9 to read the transcript in. We've got the recordings. Play the
10 recordings, but asking this witness what he remembers or
11 doesn't remember is not proper. We're stopping the cross
12 unless you have something new to go into.

13 Anything else?

14 MR. SMITH: We're finished, Your Honor.

15 THE COURT: All right. Any redirect?

16 MR. GIBBS: Briefly. I want to redirect on the
17 transcript.

18 Can I take a look at it?

19 THE COURT: Do you need the exhibit?

20 MR. GIBBS: I do. I need the exhibit that has that
21 Baghdadi comment on it.

22 REDIRECT EXAMINATION

23 BY MR. GIBBS:

24 Q. All right, Special Agent Minichello, I'd like to hand this
25 document back up to you.

Minichello - Redirect

343

1 A. Thanks.

2 Q. Sir, this is the document you just testified about related
3 to al-Baghdadi.

4 MR. SMITH: Your Honor, objection. The Court just
5 ruled that this testimony --

6 THE COURT: If we have this conversation recorded,
7 the best evidence is for the jury to hear it.

8 MR. SMITH: Correct.

9 THE COURT: So I'm going to do the same to the
10 government that I did to defense. Let's move on. This is --

11 MR. GIBBS: Judge, I don't have it cued up. I just
12 want him to read about three lines from that.

13 THE COURT: No, I've sustained the objection.

14 BY MR. GIBBS:

15 Q. Special Agent Minichello, you were asked on cross about
16 some of the reporting of Mo, and there were some names that
17 came up there. Do you recall the name Peshwaz?

18 A. I do.

19 Q. And who is Peshwaz?

20 A. Peshwaz Waise is who that's referring to, and he's a -- he
21 was another investigative subject of the FBI. I really do
22 apologize; I'm losing my voice. Peshwaz Waise is who I was
23 referring to, and he was another investigative subject --
24 counterterrorism subject of the FBI at that time.

25 Q. All right, if you can take a look at Government Exhibit

Minichello - Redirect

344

1 9-106?

2 A. I'm sorry, is it in that folder?

3 THE COURT: 9-106?

4 MR. GIBBS: Correct, Judge.

5 THE COURT: Do we have the exhibit folder?

6 MR. GIBBS: And also, while we're up, 9-107, the
7 second one.

8 And, Judge, if there's no objection to the pictures
9 of Peshwaz and also T.J. Singh, who is the other person?

10 THE COURT: All right, any objection to 106 or 107?

11 MR. SMITH: No, Your Honor.

12 THE COURT: All right.

13 MR. GIBBS: We would publish 9-106, please.

14 THE COURT: They're both in.

15 (Government's Exhibit Nos. 9-106 and 9-107 were
16 received in evidence.)

17 BY MR. GIBBS:

18 Q. And who -- you were testifying about Peshwaz. Who is, who
19 is on the screen?

20 A. 9-106 is Peshwaz Waise.

21 Q. And what was his relationship with the defendant, Nick
22 Young?

23 A. Peshwaz Waise was a friend and appeared to be a confidante
24 of Nicholas Young.

25 Q. And then if we can go to 9-107? Who is that?

Minichello - Redirect

345

1 A. 9-107 is Tejpal Singh.

2 Q. Who is he?

3 A. He is another friend of both Peshwaz and Nicholas Young,
4 and we quite often referred to him as T.J.

5 Q. Okay. And what's his relationship with Nicholas Young?

6 A. Again, he appears to be a friend and confidante of
7 Nicholas Young.

8 MR. GIBBS: All right. Thank you, Judge. That's all
9 I've got.

10 THE COURT: All right. Any recross, Mr. Smith?

11 RECROSS EXAMINATION

12 BY MR. SMITH:

13 Q. Mr. Minichello, you just testified about Peshwaz. You
14 testified that he was a confidante of Mr. Young's, correct?

15 A. Yes.

16 Q. Do you know whether Peshwaz had Mr. Young's phone number?

17 A. I don't recall if he did or not.

18 Q. He didn't have? Peshwaz did not have Mr. Young's phone
19 number, did he? You have Mr. Young's cell phone, correct?

20 A. I don't personally. I don't recall if we have that number
21 or not.

22 Q. It was seized as part of the seizure raid of Mr. Young's
23 home in October -- August 2016?

24 MR. GIBBS: Judge, the witness has already said he
25 doesn't know the answer to this question.

Minichello - Redirect

346

1 THE COURT: Sustained.

2 MR. SMITH: That's it, Your Honor.

3 THE COURT: All right, thank you.

4 Now, it's not the Court's practice to have witnesses
5 recalled in the direct examination. I see that this witness's
6 name appears again on the list. Are you really planning to
7 recall him?

8 MR. GIBBS: We are, Judge. This witness comes up at
9 the end on the day of the arrest, and he's involved in the
10 post-arrest interview, so for purposes of the chronology of the
11 case, we've done it that way.

12 THE COURT: All right. Then, Agent Minichello, you
13 are not excused as a witness. That means you cannot be in
14 court, and you're not to discuss your testimony with anyone,
15 but the next time you're in court, you'd better have a better
16 voice, all right?

17 THE WITNESS: I understand, Your Honor.

18 (Witness stood down.)

19 THE COURT: All right. Ladies and gentlemen, we need
20 to take a five-minute recess because we have to put the screen
21 back up, so you'll get a chance to stretch your legs for just a
22 couple of minutes, but don't leave the jury room because we're
23 going to get you right back in here.

24 We'll recess court.

25 (Recess from 2:28 p.m., until 2:37 p.m.)

Mo - Direct

347

1 (Defendant and Jury present.)

2 THE COURT: Call your next witness.

3 MR. GIBBS: We call Mo, Your Honor.

4 MO, GOVERNMENT'S WITNESS, AFFIRMED

5 DIRECT EXAMINATION

6 BY MR. GIBBS:

7 Q. Good afternoon, sir.

8 A. Hello.

9 Q. Sir, the name that you are testifying under today is Mo,
10 correct?

11 A. That is correct.

12 Q. And that's the name that the defendant knew you as?

13 A. That is correct.

14 Q. Now, sir, in 2013, did you begin working as an FBI source
15 here in Northern Virginia?

16 A. Yes.

17 Q. And what time of year was that?

18 A. I started back in August 2013.

19 Q. Were you living in Northern Virginia at that time?

20 A. Correct.

21 Q. And were you paid in your role as an FBI source?

22 A. Yes.

23 Q. Now, when you started working as a source, were there
24 particular FBI agents that you worked with?

25 A. Yes.

Mo - Direct

348

1 Q. And who were they?

2 A. Agent John Minichello and Cameron.

3 Q. Do you know Cameron's last name?

4 A. I don't recall.

5 Q. Now, did there come a point in time during your work as an
6 FBI source that you met the defendant, Nicholas Young?

7 A. Yes.

8 Q. And when did you and the defendant first meet?

9 A. May of 2014.

10 Q. Is the defendant here in court today?

11 A. Yes.

12 Q. All right, can you just point him out and indicate what
13 he's wearing?

14 A. He's wearing a blue navy suit.

15 THE COURT: Any objection to the identification?

16 MS. MORENO: No objection.

17 THE COURT: All right, the witness has identified the
18 defendant.

19 BY MR. GIBBS:

20 Q. Now, Mo, did you ever learn where the defendant lived?

21 A. I've never been to his house, no.

22 Q. But did you know where he lived?

23 A. Yes.

24 Q. And where did he live?

25 A. In the Fairfax area.

Mo - Direct

349

1 Q. And you said you never went to his house?

2 A. No, sir.

3 Q. And did he ever come to your house?

4 A. No.

5 Q. Now, at some point after working with the FBI as a source
6 for a period of time, did the FBI get you to start recording
7 your meetings with the defendant?

8 A. Yes.

9 Q. And did they provide you with FBI equipment in order to do
10 that?

11 A. Correct.

12 Q. And when was that?

13 A. July of 2014.

14 Q. And from the point when the FBI provided you with the
15 recording equipment to record your meetings with the defendant,
16 did you always record your meetings with him?

17 A. Yes.

18 Q. And, sir, I believe there are some discs on the stand up
19 there with you. Do you see those?

20 A. Yes.

21 MR. GIBBS: All right. And, Your Honor, at this
22 time, I'd like to have the witness identify the first one. I
23 believe it's Exhibit 6-101-2T, dated July 27, 2014.

24 Q. Do you see that?

25 A. 6-101-2?

Mo - Direct

350

1 Q. Yep.

2 A. Yes.

3 Q. And do you recognize that disc?

4 A. I do. It's got my initial on it.

5 Q. Is that how you recognize it?

6 A. Yes.

7 Q. And prior to coming to court today, did you listen to a
8 number of discs and initial them with, with putting your
9 initials on it?

10 A. I have.

11 Q. And did you also compare what's on the recording with the
12 transcript for accuracy?

13 A. Yes, I have.

14 Q. And when you did that, did you have an opportunity to make
15 any corrections on the transcript that you caught?

16 A. I did.

17 MR. GIBBS: All right. Your Honor, at this time, we
18 would move in Government Exhibit 6-101-2. We would ask --

19 THE COURT: Any objection? Any objection?

20 MR. SMITH: One moment, please.

21 No objection.

22 THE COURT: Whose witness is this?

23 MR. SMITH: This is my witness, Your Honor. No
24 objection.

25 THE COURT: All right, it's in.

Mo - Direct

351

1 (Government's Exhibit No. 6-101-2 was received in
2 evidence.)

3 MR. GIBBS: And, Your Honor, we would ask to play
4 that disc along with the transcript, which is 6-101-2T.

5 THE COURT: All right, go ahead.

6 (Government's Exhibit No. 6-101-2 was played.)

7 BY MR. GIBBS:

8 Q. Now, Mo, in that clip, the defendant said, "People don't
9 look favorably towards, like, the Islamic State." Now, had you
10 and the defendant already been talking about the Islamic State
11 by July 27 of 2014?

12 A. Yes.

13 Q. And also in that clip, the defendant used the term "the
14 new Caliphate." What is "the new Caliphate"?

15 A. He's referring to the Islamic State.

16 Q. Is that also what's known as ISIS?

17 A. Yes.

18 Q. And then at page 2 of the transcript, when the defendant
19 brought up Abu Bakr, did you know who that was?

20 A. Yes.

21 Q. And who is Abu Bakr?

22 A. He's the ruler of ISIS.

23 Q. And what role, if any, did Abu Bakr have in declaring that
24 ISIS was the new Caliphate?

25 MR. SMITH: Objection, Your Honor.

Mo - Direct

352

1 THE COURT: If you know. Overruled. Only if you
2 know.

3 THE WITNESS: Can you state the question?

4 BY MR. GIBBS:

5 Q. Sure. What role, if any, did Abu Bakr have in declaring
6 that ISIS was the new Caliphate?

7 A. He went on stand and declared in front of thousands of
8 people that he's the new ruler.

9 Q. And when did he declare the new Caliphate?

10 A. It was during Ramadan of 2014.

11 Q. And what time of year does Ramadan generally fall in?

12 A. It was around June.

13 Q. All right. So not too far before this particular
14 recording?

15 A. No.

16 Q. All right. Next if you could take a look at the disc at
17 6-102-2?

18 A. Okay.

19 Q. Do you recognize that?

20 A. Yes.

21 MR. GIBBS: And we would ask to move that in and play
22 the transcript that accompanies this, which is 6-102-2T.

23 THE COURT: Any objection?

24 MR. SMITH: Your Honor, no objection to the disc. We
25 object to the government's summaries of the audio recordings,

Mo - Direct

353

1 which were never produced to the defense and reflect the
2 government's --

3 THE COURT: We're just cueing up the transcript of
4 the tape right now; is that correct?

5 MR. GIBBS: Correct.

6 MR. SMITH: It's the government's understanding of
7 the --

8 THE COURT: Excuse me, you need to be on your feet
9 when you're speaking.

10 MR. SMITH: Your Honor, we believe it's the
11 government's understanding of the transcript rather than an
12 agent's summary of the transcript. This is a summary that the
13 government's attorneys have drafted.

14 THE COURT: Ladies and gentlemen, let me just tell
15 you what the real evidence is in a case that involves any type
16 of recording. It's what you are able to hear on the recording,
17 the actual voices speaking. That's the evidence.

18 Transcripts are prepared solely as an aid to help you
19 listen, but if you, if you detect any difference between the
20 transcript and what you're hearing, you have to go with what
21 you hear, and if the transcript says something and you don't
22 hear that on the tape, then you have to disregard the
23 transcript, all right?

24 Let's play it.

25 MR. GIBBS: Thank you, Judge.

Mo - Direct

354

1 (Government's Exhibit No. 6-102-2 was received in
2 evidence and played.)

3 BY MR. GIBBS:

4 Q. Sir, in that recording, the defendant talked to you about
5 being careful, and he said, "I look at tons of stuff on the
6 Internet." We'll get back to this in a bit, but did the
7 defendant ever show you some ISIS videos at some point?

8 A. Yes.

9 Q. And later in that recording, the defendant suggested to
10 you about going on a tour group and having a printed itinerary.

11 MR. SMITH: Objection, Your Honor. Leading.

12 THE COURT: Sustained.

13 BY MR. GIBBS:

14 Q. Who came up with the idea in that recording of going with
15 a tour group and having a printed itinerary?

16 MR. SMITH: Objection. Best evidence.

17 THE COURT: No, overruled.

18 BY MR. GIBBS:

19 Q. Whose idea was that to go with a tour group and have a
20 printed itinerary?

21 A. Nick.

22 Q. And at the end of that recording, he told you that you
23 can't carry more than \$10,000. Who was the first person to
24 tell you about this \$10,000 currency limit?

25 A. Nick did.

Mo - Direct

355

1 Q. The defendant?

2 A. Correct.

3 MR. GIBBS: Your Honor, if we could turn to -- and,
4 sir, if you could take a look at 6-103-2? And we would offer
5 that into evidence and ask to play it along with 6-103-2T.

6 MR. SMITH: No objection.

7 THE COURT: All right, it's in.

8 (Government's Exhibit No. 6-103-2 was received in
9 evidence and played.)

10 BY MR. GIBBS:

11 Q. Now, sir, at the beginning of that clip, the defendant
12 told you to lose the phone and take the battery out. Did you
13 know what he meant by that?

14 A. To put my phone away.

15 Q. And how frequently would the defendant tell you to do
16 things like that?

17 A. A few times.

18 Q. And later, the defendant told you about a brother who
19 moved down here who was in the Marines. Who first told you
20 about that brother in the Marines?

21 A. The defendant.

22 Q. And how about the Moroccan guy he said who got arrested on
23 terrorism charges? Who first told you about him?

24 A. The defendant.

25 Q. And at one point, the defendant said that he had been

Mo - Direct

356

1 interviewed by the feds a few times. When was the first time
2 the defendant told you that?

3 A. That was the first time.

4 Q. In that recording we just heard?

5 A. Correct.

6 Q. And he also told you that they try to get you with, like,
7 financial stuff. In your dealings with the defendant, how
8 often did you offer him financial stuff?

9 A. None.

10 Q. How often did the FBI task you to offer him financial
11 stuff?

12 A. Never.

13 MR. GIBBS: Your Honor, if we could turn to 6-103-3?

14 Q. Do you see that there, sir?

15 THE COURT: Any objection?

16 MR. SMITH: No objection.

17 THE COURT: All right, it's in.

18 (Government's Exhibit No. 6-103-3 was received in
19 evidence.)

20 MR. GIBBS: We'll ask to move that in and play that
21 with the transcript, please.

22 THE WITNESS: I see that.

23 (Government's Exhibit No. 6-103-3 was played.)

24 BY MR. GIBBS:

25 Q. Now, sir, in the recording we just heard, the defendant

Mo - Direct

357

1 said, "If you go to Morocco, how are you going to get to Syria
2 or Iraq?" At this point in September of 2014, where was ISIS's
3 territory located?

4 MR. SMITH: Objection.

5 THE COURT: If you know.

6 THE WITNESS: Iraq and Syria.

7 BY MR. GIBBS:

8 Q. And do you recall in that recording the defendant
9 mentioning to you that you should get an Associated Press job
10 or a journalist-type badge?

11 A. Correct.

12 Q. Who came up with the idea of getting an Associated Press
13 job or a journalist-type badge?

14 A. The defendant.

15 MR. GIBBS: Next if we could turn to 6-103-5 and 5T?
16 It's another disc dated September 11, 2014. If we could play
17 that?

18 THE COURT: Any objection?

19 MR. SMITH: No objection, Your Honor.

20 THE COURT: All right, it's in.

21 (Government's Exhibit No. 6-103-5 was received in
22 evidence and played.)

23 MR. GIBBS: Now, if we can go straight to the next
24 clip, which is also on that date, 6-103-6?

25 THE COURT: Any objection?

Mo - Direct

358

1 MR. SMITH: No objection.

2 THE COURT: All right, it's in.

3 (Government's Exhibit No. 6-103-6 was received in
4 evidence and played.)

5 BY MR. GIBBS:

6 Q. Now, sir, in the first clip we heard, the defendant asked
7 if you had watched the latest Light Revival and Light Reloaded
8 videos, and then he said, "That's why I brought this, so I'll
9 show you it." What did the defendant actually bring you to
10 show?

11 A. The ISIS-produced video.

12 Q. And what did he bring to play it on?

13 MR. SMITH: Objection.

14 THE COURT: What's the basis for the objection? On
15 your feet, please.

16 MR. SMITH: The basis is personal knowledge of how
17 the video was created and by whom the video --

18 THE COURT: That wasn't the question, I don't
19 believe.

20 MR. GIBBS: No, the question was what did he bring to
21 play it on.

22 THE COURT: What was the device upon which it was
23 going to be played.

24 MR. SMITH: It was the question before that about --

25 THE COURT: Well, you objected to this question.

Mo - Direct

359

1 Overruled.

2 BY MR. GIBBS:

3 Q. And what did the defendant bring to play the video on?

4 A. I can't recall.

5 Q. But did you actually watch some videos with the defendant
6 that day?

7 A. Yes.

8 Q. And in the second clip, the defendant said, "Hicham and
9 T.J., like, watch these a lot." Who is Hicham?

10 A. Hicham is a friend of the defendant.

11 Q. Do you know his -- well, Your Honor, at this time, I'd
12 like to read Stipulation No. 19 into the record.

13 THE COURT: All right.

14 MR. GIBBS: The United States and the defendant
15 hereby stipulate and agree that Government Exhibit 9-105 is a
16 photograph that accurately depicts Hicham Hall.

17 And we would ask to publish that photograph, which is
18 Exhibit 9-105.

19 THE COURT: Any objection?

20 MR. SMITH: No objection.

21 THE COURT: All right, it's in.

22 (Government's Exhibit No. 9-105 was received in
23 evidence.)

24 BY MR. GIBBS:

25 Q. And do you recognize that individual, sir?

Mo - Direct

360

1 A. I do.

2 Q. And who is he?

3 A. That's Hicham, the defendant's friend.

4 Q. And he also -- you mentioned Hicham and T.J. Who is T.J.?

5 A. T.J. is another friend of the friend and a friend of
6 Hicham.

7 MR. GIBBS: And if we could pull up 9-107, which is
8 already in evidence?

9 THE COURT: All right.

10 BY MR. GIBBS:

11 Q. And who is that?

12 A. T.J.

13 Q. That's the person you just testified about?

14 A. Correct.

15 Q. Now, a moment ago, you said that the defendant played some
16 videos for you. Where were the two of you when, when you
17 watched those videos?

18 A. Do you want me to tell you exactly where?

19 Q. Well, I mean, just generally.

20 A. We're at the Afghani restaurant in Fairfax.

21 Q. And is that someplace you often went and had meals
22 together?

23 A. Yes.

24 Q. And in the second clip that we heard, you asked the
25 defendant if you should be sitting like that. Why did you ask

Mo - Direct

361

1 him that question?

2 A. Because we were in -- we were in the open.

3 Q. And then in response, the defendant said, "I watch this
4 one when I'm at lunch at work." Who did the defendant work
5 for?

6 A. D.C., D.C. Metro Police, or Transit.

7 Q. And, and what was the topic of these videos you watched in
8 the Afghani restaurant?

9 A. The topic of the video?

10 Q. Yes.

11 A. I can't recall.

12 Q. What were they about, though?

13 A. They were ISIS propaganda, recruiting videos, talking
14 about jihad and several other topics.

15 Q. And there at the end of that second clip that we heard,
16 the defendant asked if you had talked to Hicham about anything,
17 because he said he's, quote, very against. What was Hicham
18 against at that point?

19 A. Joining ISIS or supporting ISIS.

20 MR. GIBBS: Thank you, sir.

21 If we can next go to Exhibit 6-104-2?

22 MR. SMITH: No objection.

23 MR. GIBBS: Thank you.

24 THE COURT: It's in.

25 (Government's Exhibit No. 6-104-2 was received in

Mo - Direct

362

1 evidence.)

2 MR. GIBBS: We'd ask to play that along with the
3 transcript, and this is a clip dated October 2, 2014.

4 (Government's Exhibit No. 6-104-2 was played.)

5 BY MR. GIBBS:

6 Q. Now, sir, at the beginning of that clip we just listened
7 to, the defendant said he watched videos of guys running around
8 in sandals and, quote, even, like, fighting.

9 How did the defendant's reference to fighting compare
10 to what you were saying was the purpose of your trip?

11 A. Say that again?

12 Q. How did the defendant's reference to fighting in that clip
13 compare with what you were telling him you were planning to do
14 with your trip?

15 A. He was referring to ISIS fighters fighting in the videos
16 he showed me.

17 MR. SMITH: Objection.

18 THE COURT: What's the basis for the objection?

19 MR. SMITH: The witness should not be testifying
20 about the defendant's personal mental state of which he has no
21 personal knowledge.

22 THE COURT: I'll sustain that objection.

23 BY MR. GIBBS:

24 Q. And what were you telling the defendant your plans were?

25 A. To travel overseas.

Mo - Direct

363

1 Q. To do what?

2 A. To join our fight.

3 Q. And when the defendant was giving you advice about what
4 you should pack for that trip, he mentioned digital video
5 cameras and digital zooms. Who first brought up those topics
6 in your discussions?

7 A. The defendant.

8 Q. And he also said that he heard that these guys are on,
9 like, social media, like, lesser known things like Kik. Who
10 first brought up social media things like Kik in your
11 discussions?

12 A. The defendant.

13 Q. And after he brought up Kik, the defendant said to you you
14 can actually get in contact with these people over that.

15 MR. SMITH: Objection. Best evidence.

16 THE COURT: Overruled.

17 BY MR. GIBBS:

18 Q. And what did you understand "these people" to refer to?

19 A. Fighters overseas or recruiters.

20 MR. GIBBS: Thank you.

21 Your Honor, if we can next turn to Exhibit 6-104-3?

22 THE COURT: Any objection?

23 MR. SMITH: No.

24 THE COURT: It's in.

25 (Government's Exhibit No. 6-104-3 was received in

Mo - Direct

364

1 evidence and played.)

2 BY MR. GIBBS:

3 Q. All right. Now, sir, in the clip we just listened to, the
4 defendant told you that there's a chance you'll get asked,
5 like, a lot of questions, and then you brought up T.J. Remind
6 us again who T.J. is.

7 A. T.J. is the second picture that was shown.

8 Q. And who is he?

9 A. The defendant's friend.

10 Q. And that's Tejpal Singh?

11 A. Yes.

12 Q. And at that point, you said to the defendant that, quote,
13 you were there at the Little Italian when he was explaining
14 about his flight. What was that a reference to?

15 A. An experience he had. He was pulled aside for extra
16 questioning.

17 Q. And he told that story to you and the defendant?

18 A. Yes.

19 Q. And was anyone else there?

20 A. Yes.

21 Q. Who else was there?

22 A. A guy named Peshwaz was there, and I don't recall if
23 Hicham was there or not.

24 Q. Okay. But those are -- and who are Peshwaz and Hicham?

25 A. It's another person in the group of -- in the circle of

Mo - Direct

365

1 friends of the defendant.

2 MR. GIBBS: All right, thank you, sir.

3 Next if we could turn to Government Exhibit 6-110-1,
4 which is a clip dated October 9, 2014?

5 THE COURT: Any objection?

6 MR. SMITH: What was the exhibit number again?

7 THE COURT: 110, 6-110.

8 MR. SMITH: No objection.

9 THE COURT: It's in.

10 (Government's Exhibit No. 6-110-1 was received in
11 evidence.)

12 MR. GIBBS: And we would ask to play that, Your
13 Honor. Thank you.

14 THE COURT: Yes, sir.

15 (Government's Exhibit No. 6-110-1 excerpt was
16 played.)

17 MR. SMITH: Objection. Relevance. Your Honor, we
18 object to the relevance. The government is playing a
19 ten-minute clip that has no relevance to this case.

20 THE COURT: I think this has been long enough.

21 MR. GIBBS: And that's the end of it, Judge. Thank
22 you.

23 Q. So, sir, who was doing most of the talking there in that
24 clip?

25 A. Hicham.

Mo - Direct

366

1 MR. GIBBS: And if we could pull up Government
2 Exhibit 9-105?

3 THE COURT: Any objection to -- oh, that's the
4 photograph.

5 MR. GIBBS: It's in evidence.

6 MR. SMITH: No objection.

7 BY MR. GIBBS:

8 Q. And who is this again?

9 A. That's Hicham.

10 Q. All right. So he was the one doing most of the talking in
11 the clip we just listened to, correct?

12 A. Correct.

13 Q. All right. And can you just set this up? First of all,
14 where were you when this clip was recorded?

15 A. We were at Hicham's house.

16 Q. What was going on at Hicham's house?

17 A. He was inviting us over for dinner.

18 Q. And when you say "we were there," who else besides
19 yourself and Hicham were there?

20 A. T.J. and the defendant.

21 Q. And just describe for us sort of how -- what stage of the
22 night was it when this -- or of the dinner was it when this
23 clip was recorded?

24 A. It was past dinnertime. Almost everyone left, and myself,
25 the defendant, and Hicham were talking.

Mo - Direct

367

1 Q. And where did this conversation take place?

2 A. At Hicham's basement or lower bedroom, I guess.

3 Q. And so at the time that the recording was made, who was
4 there? Was it just the three of you?

5 A. Correct.

6 Q. And at this point in time, was Hicham aware of what your
7 plans were?

8 A. Prior to this?

9 Q. Yes.

10 A. He had the indications, but it was solidified and then
11 this clip.

12 Q. And what did you do while all this was going on? What was
13 your response?

14 A. I was just listening to what he was saying.

15 Q. And was Nick Young there for the entire conversation?

16 A. Yes.

17 MR. GIBBS: Thank you.

18 Your Honor, next we would move to Government Exhibit
19 6-105-1, which is a clip dated actually the next day,
20 October 10, 2014.

21 THE COURT: Any objection?

22 MR. SMITH: No objection.

23 THE COURT: It's in.

24 (Government's Exhibit No. 6-105-1 was received in
25 evidence.)

Mo - Direct

368

1 MR. GIBBS: Thank you. We'd ask to play that along
2 with the transcript.

3 THE COURT: Yes.

4 (Government's Exhibit No. 6-105-1 excerpt was
5 played.)

6 MR. SMITH: Objection. Relevance.

7 THE COURT: This is not a drug case, so you need to
8 keep that out, all right?

9 MR. GIBBS: Okay.

10 THE COURT: Sustained.

11 MR. GIBBS: Can we pick it up there, Your Honor?

12 THE COURT: Get past that.

13 (Government's Exhibit No. 6-105-1 excerpt was
14 played.)

15 MR. SMITH: Objection. Objection.

16 THE COURT: Wait, wait, wait. Take it off. Take it
17 off.

18 MR. GIBBS: Your Honor, this was completely
19 unsolicited. The defendant offered this as an example of why
20 he is so paranoid and how even somebody trying to sell him cut
21 rate steroids is somebody he's suspicious of at the gym. So it
22 certainly goes to his state of mind. He was not prompted by
23 the source.

24 MR. SMITH: Your Honor, the defendant's state of mind
25 about drugs is irrelevant to this case.

Mo - Direct

369

1 THE COURT: It is, and I've told the jury that, and
2 we have 14 very attentive people who understand the difference.

3 This is not a drug case, folks, all right? So any
4 reference or discussion about drugs, there's no indication that
5 the defendant is using or selling drugs.

6 Let's just move on. Overruled.

7 MR. GIBBS: Let's finish it.

8 (Government's Exhibit No. 6-105-1 excerpt was
9 played.)

10 BY MR. GIBBS:

11 Q. Now, sir, in the clip we just heard, the defendant talked
12 about being suspicious of everyone and trying not to deal with
13 people in mosques. How often would he say things like that to
14 you?

15 A. Often.

16 Q. And at the end of the clip, the defendant talked about
17 Nabil saying certain things last night and your reaction to
18 what he said. Can you explain what had happened with Nabil the
19 night before?

20 A. Yes. We were talking about ISIS and whether it's
21 legitimate to legitimize their cause, and the defendant was
22 suspicious of me up until he saw me defending my side of the
23 story.

24 Q. And what was your side of the story?

25 A. That ISIS is legitimate.

Mo - Direct

370

1 Q. And when he talked about that occurring the night before,
2 was the night before the dinner at Hicham's place you already
3 testified about?

4 A. It was that night.

5 Q. And in terms of Hicham, I didn't ask you this before, but
6 you testified about who Hicham is. Did, did Nick Young know
7 Hicham before you did?

8 A. Yes.

9 Q. All right. So how did you meet, first meet Hicham?

10 A. I met Hicham going to Adams Sully.

11 Q. What is that?

12 A. It's a mosque at Sully, and I forgot the name of the town.

13 MR. GIBBS: That's all right. Thank you.

14 Judge, next we would ask to play Government Exhibit
15 6-106-4, and the transcript is 4T.

16 THE COURT: Any objection?

17 MR. SMITH: No objection.

18 THE COURT: All right, it's in.

19 (Government's Exhibit No. 6-106-4 was received in
20 evidence and played.)

21 BY MR. GIBBS:

22 Q. Now, sir, in the clip we just listened to, at one point,
23 the defendant told you to stick with the medical story until
24 you get to wherever you're trying to reach. What was the
25 medical story?

Mo - Direct

371

1 A. The medical back- -- so with my medical background and
2 with the story of joining an organization, going along with
3 that, when I get to ISIS territory, that I can tell them my
4 medical background before I mention my military background.

5 Q. And the defendant also made a comment at the end of that
6 clip about, he said, thousands of people getting buried alive.
7 What was that a reference to?

8 MR. SMITH: Objection.

9 THE COURT: If you understand. Do you know from the
10 context what that was about?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: All right, go ahead. Overruled.

13 THE WITNESS: From the videos that were shown of
14 thousands of people being buried by ISIS.

15 MR. GIBBS: Thank you.

16 Your Honor, next we would turn to Government Exhibit
17 6-107-1. It's a clip dated October 17, 2014.

18 MR. SMITH: No objection.

19 MR. GIBBS: We'd ask to play that.

20 THE COURT: All right, it's in.

21 (Government's Exhibit No. 6-107-1 was received in
22 evidence and excerpt was played.)

23 MR. SMITH: Objection, Your Honor. Relevance. This
24 conversation is just dragging on and on.

25 THE COURT: I agree with that. I'll sustain the

Mo - Direct

372

1 objection.

2 MR. GIBBS: That's fine, Judge.

3 Q. Before we move to the next clip, at the beginning of that
4 particular clip, the defendant told you that if you get a
5 boarding pass with four S's on it, it means you've been
6 selected for additional screening. Who first told you that
7 piece of information?

8 A. The defendant.

9 MR. GIBBS: Thank you.

10 Next, Your Honor, I'd like to move to Government
11 Exhibit 6-108-1 and 1T.

12 MR. SMITH: No objection.

13 THE COURT: It's in.

14 (Government's Exhibit No. 6-108-1 was received in
15 evidence and excerpt was played.)

16 MR. SMITH: Objection, Your Honor. Relevance. This
17 is --

18 MR. GIBBS: Judge, this is the last clip we have of
19 any length, and this is actually the one where the defendant
20 proposes the text message that he's going to --

21 THE COURT: I'm going to overrule the objection.

22 MR. GIBBS: Thank you.

23 (Government's Exhibit No. 6-108-1 excerpt was
24 played.)

25 THE COURT: All right, I think the jury has been

Mo - Direct

373

1 sitting now for over two hours. It's a good time to take a
2 break, and I'll give everybody 15 minutes. We'll start up at
3 25 of.

4 MR. GIBBS: Thank you, Judge.

5 (Recess from 4:21 p.m., until 4:37 p.m.)

6 (Defendant present, Jury out.)

7 THE COURT: How much longer do you have with this
8 witness?

9 MR. GIBBS: I was looking, Judge. I don't think much
10 longer. I've got one clip that's about four minutes and then a
11 couple others that are less than a minute each, and I've got
12 just a couple of exhibits to show and just a couple of
13 pictures, so I anticipate ten minutes maybe, maybe fifteen, but
14 quickly.

15 THE COURT: All right. He went on around 2:40 today.
16 I want to make sure this case doesn't drag, so I'm alerting the
17 defense that you're going to get no more than about the same
18 time for direct. So if you're expecting a four- or five-hour
19 cross, it's not going to happen.

20 MR. GIBBS: I understand.

21 THE COURT: All right, let's bring the jury in. And
22 the witness can come in.

23 (Jury present.)

24 THE COURT: As I said before, folks, you're not
25 frozen to any particular seat, so make sure that you feel

Mo - Direct

374

1 comfortable moving around in the box. I know some of you have
2 moved down, which is just fine. Especially the people who have
3 been in the back row for all today, you know, you have to
4 either look at the big screen or the ones on the front row, so
5 maybe tomorrow you may want to switch position, okay? You
6 don't have to. It's up to you-all.

7 All right, Mr. Gibbs, the witness is back on the
8 stand.

9 MR. GIBBS: All right, thank you.

10 Q. All right, sir, at the end of that last clip, the
11 defendant made a statement how he said that, quote, I'm going
12 to text your phone, like, today or after that or something,
13 because it will be good for me.

14 Do you recall that?

15 A. I do.

16 Q. And what were you expected to do from the FBI if you got a
17 text message like that from the defendant?

18 A. To immediately notify them and send over the text.

19 Q. And did you, in fact, get a text message like that from
20 the defendant?

21 A. I did.

22 Q. And what did you do with it?

23 A. I forwarded it to Agent John Minichello.

24 MR. GIBBS: And if we could just pull up Exhibit
25 6-201, which is already in evidence?

Mo - Direct

375

1 Q. And, sir, do you recognize this?

2 A. I do. I've seen it before.

3 Q. I'm sorry, what is this?

4 A. This is, yeah, a text message that the defendant sent to
5 my phone.

6 MR. GIBBS: If we could just blow up the message at
7 the end of that? And then I'll move on.

8 THE COURT: It's there. It's already there.

9 MR. GIBBS: Okay. Thank you.

10 Q. And is that the text message he sent to you on that day?

11 A. Yes.

12 MR. GIBBS: Thank you.

13 Your Honor, next if we could, I would offer into
14 evidence 6-108-2, which is another clip.

15 MR. SMITH: No objection.

16 THE COURT: All right, it's in.

17 (Government's Exhibit No. 6-108-2 was received in
18 evidence.)

19 MR. GIBBS: If we could play that, Mr. Vera? Thank
20 you.

21 (Government Exhibit No. 6-108-2 was played.)

22 BY MR. GIBBS:

23 Q. Sir, in that clip, the defendant told you that it's only
24 illegal to take up arms against a U.S. ally or to join a
25 terrorist organization, and then he described what could happen

Mo - Direct

376

1 if you lied to a federal agent. Who was the first one to bring
2 up the consequences of lying to a federal agent?

3 A. Yeah, the defendant.

4 MR. GIBBS: All right. Next if we could move to
5 Government Exhibit 6-109-4?

6 THE COURT: Any objection?

7 MR. SMITH: No objection.

8 THE COURT: All right, it's in.

9 (Government's Exhibit No. 6-109-4 was received in
10 evidence.)

11 MR. GIBBS: We'd ask to play that.

12 (Government's Exhibit No. 6-109-4 was played.)

13 BY MR. GIBBS:

14 Q. Now, sir, where did you and the defendant go after this
15 conversation on October 25, 2014?

16 A. The Kinko's in Sterling.

17 Q. And how did you get there?

18 A. By vehicle.

19 Q. And whose vehicle was it?

20 A. My vehicle. It was a rental.

21 MR. GIBBS: And, Your Honor, at this time, I would
22 read another stipulation into evidence.

23 THE COURT: All right.

24 MR. GIBBS: It's Stipulation No. 15, which states
25 that the United States and the defendant hereby stipulate and

Mo - Direct

377

1 agree that Government Exhibits 7-200 through 7-215 are
2 authentic business records of FedEx Office & Print Services,
3 Inc., and at this time, I would offer into evidence two of
4 those exhibits, which is 7-201A and 7-201C.

5 THE COURT: Any objection?

6 MR. SMITH: No objection.

7 THE COURT: All right, they're both in.

8 (Government's Exhibit Nos. 7-201A and 7-201C were
9 received in evidence.)

10 MR. GIBBS: If we could publish -- let's do 7-201A.

11 Q. And, sir, can you describe what this is a photograph of?

12 A. It's a photograph of myself and the defendant. I'm in the
13 pink shirt, and we've -- that's a picture of us entering the
14 Kinko's.

15 Q. And he's the one in the dark shirt; is that correct?

16 A. Correct.

17 Q. And what did you two do at the store on October 25 of
18 2014?

19 A. We paid for a FedEx card with cash to log on to a computer
20 so that it doesn't trace back to us.

21 Q. And what were you actually purchasing in the FedEx store?

22 A. Computer time -- or a card that allows to log in to a
23 computer to use the computer.

24 Q. Okay. And so let's -- Your Honor, at this time, we would
25 ask to play another short clip, which is Government Exhibit

Mo - Direct

378

1 6-109-5.

2 THE COURT: Any objection?

3 MR. SMITH: No objection.

4 THE COURT: All right, it's in.

5 (Government's Exhibit No. 6-109-5 was received in
6 evidence and excerpt was played.)

7 MR. SMITH: Objection, Your Honor.

8 THE COURT: Wait a minute, wait a minute.

9 MR. SMITH: We weren't told which clip this would be
10 so --

11 THE COURT: It's 6-109-5.

12 MR. SMITH: Your Honor will see from the exhibit list
13 in this case that the government has not provided minutes for
14 the recordings that it intends to play in court, so the defense
15 is unaware of which particular minutes the government wants to
16 play from a given recording. We object to this.

17 MR. GIBBS: Your Honor, these were all provided to
18 the defense.

19 THE COURT: As long as you've had the entire exhibit,
20 the fact that the government is not playing the whole thing is
21 not in my view a violation of the rules. So the objection is
22 overruled.

23 Let's go. You may play it.

24 Did you lose it?

25 MR. VERA: I did. One second.

Mo - Direct

379

1 (Government Exhibit No. 6-109-5 was played.)

2 BY MR. GIBBS:

3 Q. And, sir, what was going on in this clip?

4 A. We were setting up our accounts, communication accounts,
5 e-mail accounts.

6 Q. Okay. And you were setting up your e-mail accounts, and
7 as part of that, did you have to provide a, a birth date?

8 A. Yes.

9 Q. And what birthday did the defendant provide?

10 A. Hitler's birthday.

11 Q. And did you know what Hitler's birthday was at that point?

12 A. Not at the time, no.

13 MR. GIBBS: All right. And, Your Honor, we have one
14 last clip I'd like to play, which is 6-109-6.

15 THE COURT: Any objection?

16 MR. SMITH: No objection.

17 THE COURT: All right, it's in.

18 (Government's Exhibit No. 6-109-6 was received in
19 evidence and played.)

20 BY MR. GIBBS:

21 Q. So, sir, what was going on in that clip?

22 A. We were still filling out data and -- while we were
23 creating accounts, we were filling out data and actually
24 creating the user name of the account, of each e-mail account.

25 Q. And what was the defendant's e-mail account that he set up

Mo - Direct

380

1 on October 25, 2014, with you?

2 A. Essa Kobayashi, the one that was shown.

3 Q. And was that the last day that you saw the defendant
4 before this trial started?

5 A. I can't recall. Either we met again one last time before
6 that, or that was the last time.

7 Q. Okay. But was this towards the end of your last in-person
8 meetings with the defendant?

9 A. Yes.

10 Q. And what happened after the two of you parted ways?

11 A. Basically, he gave me a, gave me a hug and told me --
12 wished me luck.

13 Q. And where did you go at that point?

14 A. From there?

15 Q. Well, did you -- you know, a few days after this, where
16 did you go?

17 A. I left to Turkey.

18 Q. With?

19 A. With Agent John Minichello.

20 Q. All right, thank you.

21 And at any of the time while you were still in touch
22 with the defendant or with the defendant, at any point, did you
23 ever ask the defendant to lie if he was approached by the FBI
24 about you?

25 A. No.

Mo - Cross

381

1 MR. GIBBS: Thank you.

2 Your Honor, that's all I have, Judge.

3 THE COURT: All right. Cross-examination?

4 CROSS-EXAMINATION

5 BY MR. SMITH:

6 Q. So, Mo, I'm Nicholas Smith. I'm representing Nicholas
7 Young. I'm going to cross-examine you with some questions.

8 A. Hello.

9 Q. So you're testifying here today under a pseudonym,
10 correct?

11 A. That's correct.

12 Q. You are -- your role in this case was as a paid informant
13 for the FBI?

14 A. Yes.

15 Q. You're not an agent of the FBI. You are sort of a
16 contractor for the FBI. They pay you to, to report on a
17 target?

18 A. I'm not a contractor.

19 Q. You're not an agent of the FBI, correct?

20 A. No, and I'm not an agent.

21 Q. You were paid over \$34,000 to report on Nicholas Young,
22 correct?

23 A. Specifically for Nicholas Young? I was paid 34,000, yes.

24 Q. In connection with this investigation into Nicholas Young?

25 A. Yes.

Mo - Cross

382

1 Q. How did your payment work? Were you paid for results?

2 A. I don't understand the question.

3 Q. Were you paid regardless of whether you performed poorly
4 by the FBI in connection with your investigation into Nicholas
5 Young?

6 A. The payment wasn't just for Nicholas Young. I started
7 working before that.

8 Q. When did the -- when did the government agree to make a
9 payment to you of \$34,000?

10 A. It wasn't a sum payment. It was --

11 Q. How was it -- how did the payment work?

12 A. I started back in August 2013, and they would pay me for
13 information.

14 Q. What kind of information did they pay you for?

15 A. I don't seem to understand.

16 Q. What kind of information did the FBI pay you for?

17 A. Any information that they needed help with.

18 Q. Such as? What's an example of the information they needed
19 help with?

20 A. I don't, I don't understand what you're saying.

21 Q. They told you they needed information, and they agreed to
22 pay you in exchange, correct?

23 A. That's not how it worked.

24 Q. How does it work?

25 A. They would, they would help -- they would ask me to do

Mo - Cross

383

1 something, and I would --

2 Q. What would they ask you to do?

3 A. Before Nicholas Young? Are we talking about --

4 Q. I'm asking you what they paid you to do. What did they
5 pay you the \$34,000 to do?

6 A. They paid me to gather information.

7 Q. What kind of information?

8 A. Any information that would hurt, like, hurt U.S. citizens,
9 U.S. interests.

10 Q. Any information that would hurt U.S. citizens or U.S.
11 interests?

12 A. Correct.

13 Q. They also instructed you to engage in conversations with
14 ISIS about the targets you're reporting on, correct? You were
15 instructed to raise the subject of ISIS with the targets of the
16 investigations?

17 A. Of Nicholas?

18 Q. Yes.

19 A. No.

20 Q. You were not instructed to do that?

21 A. No.

22 Q. So you created a legend with your agent handler, correct?

23 A. I don't seem to understand. A legend?

24 Q. Are you familiar with the term "legend"?

25 A. No.

Mo - Cross

384

1 Q. You created a fake personality with the agent handler who
2 you worked with, correct? And you would assume that
3 personality while you're reporting on an individual?

4 A. I wouldn't say a fake, no, but I was planning on
5 traveling, yes.

6 Q. So you assumed a fake identity in order to report on
7 Nicholas Young, correct?

8 A. A fake identity? No.

9 Q. It wasn't fake?

10 A. No.

11 Q. So you are testifying here today you were not under a
12 pseudonym when you met Nick and gave him your background? That
13 was true information, correct?

14 A. The, the pseudonym is short for my, for my real name.
15 It's not fake.

16 Q. When you introduced yourself to Nicholas Young, you
17 explained where you were from, correct?

18 A. Yes.

19 Q. And that you had family members, correct?

20 A. Yes.

21 Q. And was that information true or false?

22 A. It's true.

23 Q. All of it was true?

24 MR. GIBBS: Judge, may we approach on this?

25 THE COURT: Yes.

Mo - Cross

385

1 (Bench conference on the record.)

2 MR. GIBBS: Judge, I think the witness is a little
3 bit confused as to I hope we're not bringing out true
4 information, but obviously, anything that relates to who he
5 truly is is protected by the protective order.

6 MR. SMITH: Your Honor, we've got several documents
7 in discovery from the government stating that the information
8 he told Nicholas Young was false. If he's now testifying it's
9 true, that's a credibility issue. It's impeachment.

10 MR. GIBBS: No, I think he's confused by the
11 question. I think he's just --

12 THE COURT: Well, the problem is you cannot reveal
13 his true identity or any information that could lead somebody
14 to figure out who he is, and that's part of the sensitivity of
15 this case. That's the whole reason why we have the screen up.
16 So you need to stay away from that.

17 MR. SMITH: Your Honor, I'm not asking him about his
18 true identity. I'm asking whether the information that he gave
19 the defendant about his background was true or false.

20 THE COURT: That's the same thing. He's of
21 Palestinian origin. You've already got him verifying his true
22 first name is Mohammad. I mean, I'm concerned. I thought
23 you-all would be on your feet sooner.

24 All right, stay away from it.

25 MR. SMITH: Stay away from it?

Mo - Cross

386

1 THE COURT: Stay away from it.

2 (End of bench conference.)

3 BY MR. SMITH:

4 Q. Now, when did you meet Nicholas Young?

5 A. I met him back in May of 2014.

6 Q. And where did you meet him?

7 A. At the Sully Mosque.

8 Q. And were you at the Sully Mosque to meet Nicholas Young
9 that day?

10 A. That specific day?

11 Q. The first time you met him, were you going to the Sully
12 Adams Mosque in order to meet Nicholas Young, or did you happen
13 to chance on him there?

14 A. No, I just -- it was a chance.

15 Q. So at what point were you directed by your agent handler
16 to report on Nicholas Young?

17 A. It wasn't until later.

18 Q. It was not until later.

19 A. Yes.

20 Q. Your agent handler instructed you on how to describe
21 yourself to Nicholas Young in order to develop a relationship
22 with him, correct?

23 A. Can you elaborate?

24 Q. You were directed by your agent handler to develop a
25 relationship with Nicholas Young, correct?

Mo - Cross

387

1 A. Yes.

2 Q. And how did he instruct you to develop a relationship with
3 Nicholas Young?

4 A. He asked me to report any conversations that I had with
5 Nicholas Young.

6 Q. Right. But before you had sensitive conversations with
7 Nicholas Young, you were directed to develop a connection with
8 him first, correct?

9 A. He was in the same group of friends of Hicham and T.J., so
10 by default, he was part of the -- by the association, it fell
11 naturally.

12 Q. Your agent handler directed you to become friends with
13 Nicholas Young, to report on him, correct?

14 A. Yes.

15 Q. And how did he tell you -- how did your agent handler
16 direct you to develop a friendship with Nicholas Young?

17 A. I don't seem to understand. How did he -- how did he ask
18 me to do that?

19 Q. You just testified that he -- that your agent handler
20 directed you to become friends with Nicholas Young, correct?

21 A. Yes.

22 Q. And how did your agent handler instruct you to go about
23 becoming friends with Nicholas Young?

24 A. Simply to strike a relationship and listen.

25 Q. Strike a relationship. And how would you -- how did you

Mo - Cross

388

1 strike the relationship?

2 A. Two guys going to the masjid and praying and, and meeting
3 afterwards for dinner or something like that.

4 Q. So you told Nicholas Young you went to George Mason
5 University, correct?

6 A. Correct.

7 Q. Nicholas Young went to George Mason University, correct?

8 A. Yes.

9 Q. You told him you were in the military reserves, correct?

10 A. Correct.

11 Q. You told him that you had a religious conflict at work
12 with the military reserves that might cause you to leave,
13 correct?

14 A. Yes.

15 Q. You knew that Nicholas Young told you that he had a
16 religious conflict at work with the police department, correct?

17 A. I don't recall.

18 Q. So you had a -- you met Nicholas Young in 2014, and your
19 relationship under this pseudonym lasted until about August of
20 2016, correct?

21 A. Me personally physically?

22 Q. The character called Mo had a relationship between -- with
23 Nicholas Young between May 2014 and August 2016, including
24 e-mails, correct?

25 A. Yes.

Mo - Cross

389

1 Q. You met with Nicholas Young over 23 times, correct?

2 A. I don't recall the exact times, but that sounds about
3 right.

4 Q. You met with Nicholas Young on many more occasions than on
5 the occasions for which we played clips during your direct
6 testimony, correct?

7 A. Past my trip to Turkey? Is that what you're saying?

8 Q. Including all of the times you've met with the defendant,
9 Nicholas Young, there were a number of occasions you met with
10 Nicholas Young in addition to the dates for which we played
11 clips, audio clips during your direct testimony, correct?

12 A. Past my trip to Turkey, I did not meet with Nicholas
13 Young.

14 Q. There was a number of times which you met with Nicholas
15 Young, correct? Over 20 times, right?

16 A. I don't recall.

17 Q. You met with Nicholas Young on occasions which you did not
18 play in a recording during your direct testimony, correct?

19 A. Again, I don't recall how many times.

20 Q. I'm not asking you how many times.

21 A. Okay. I haven't met him after my trip to Turkey.

22 THE COURT: No, no, that's not, that's not the
23 question. The question is were all of your conversations that
24 you had, you in person had with him played in court today?

25 THE WITNESS: Not all of them.

Mo - Cross

390

1 BY MR. SMITH:

2 Q. Not all of them. So there were times when you met with
3 Nicholas Young there was no recording which was played in court
4 today, correct?

5 A. All of them were recorded, but not all of them were
6 played.

7 Q. All of your meetings with Nicholas Young were recorded?

8 A. Yes.

9 Q. Okay. You testified on direct today that the first
10 recording you made of Nicholas Young was in July 2014, correct?

11 A. Audio recording, yes.

12 Q. No, you said all -- you just testified, sir, that all of
13 your meetings with Nicholas Young were recorded, correct?

14 A. Yes, audio recording.

15 Q. And you also testified that the first recorded meeting was
16 July 2014, correct?

17 A. Yes.

18 MR. SMITH: This is Defense Exhibits 2 through 6.

19 Q. Do you see the sticky note that says DX-2 on it?

20 A. Yes.

21 Q. This is an FBI memorandum called a 1036 form. Do you
22 recognize the author of the memorandum?

23 A. Yeah -- yes.

24 Q. What does it say?

25 A. John Minichello.

Mo - Cross

391

1 Q. Who is John Minichello?

2 A. He's the FBI agent I was in contact with.

3 Q. He's your agent handler, right?

4 A. Yes.

5 Q. This memorandum reflects your meeting --

6 MR. GIBBS: Judge, he can -- if he's using it to
7 refresh, he needs to be able to have a chance to read it and
8 hear a question instead of having it, the sort of leading
9 questions right here.

10 MR. SMITH: This is cross-examination.

11 THE COURT: Number one, on cross-examination, the
12 other side can lead, as you know. Number two, though, I don't
13 want a whole lot of repetition, and so to the extent that this
14 is going over what was rehashed with the agent, we're not going
15 to hear it a second time.

16 MR. SMITH: Your Honor, the witness just testified --

17 THE COURT: Mr. Smith, when I'm speaking, you don't
18 speak over the Court. The court reporter cannot get two people
19 at the same time. Let me finish.

20 I'm going to permit a little bit of this as long as
21 it's not repeating everything that's been going on, all right?

22 MR. SMITH: Okay.

23 MR. GIBBS: Thank you, Judge.

24 BY MR. SMITH:

25 Q. Do you see the date May 22 in the document marked DX-2?

Mo - Cross

392

1 A. Yes.

2 Q. Does that May 22 date reflect a meeting you had with
3 Nicholas Young?

4 A. Yes. That's -- this is in part of information I provided
5 in an e-mail to John.

6 Q. So, so that May 22 date is May 22, 2014, correct?

7 A. Yes.

8 Q. So you just testified here today that you have had no
9 meetings with Nicholas Young that were not recorded, correct?

10 A. I said the audio recordings start in July.

11 Q. Right. Okay. Can you turn to DX No. --

12 THE COURT: Well, wait. You're saying audio
13 recordings. Are there some other kind of recordings going on
14 here?

15 THE WITNESS: No, ma'am. I met the defendant in May;
16 however, in July is when the audio recordings started.

17 THE COURT: So you did not -- were not involved in
18 any recordings with the defendant in May or June?

19 THE WITNESS: Well, I would pass any information to
20 the agent, though.

21 THE COURT: No, no, that's not the question.

22 THE WITNESS: Yes.

23 THE COURT: The question is were you involved, either
24 yourself on your own -- at your own initiative or at the
25 direction of the FBI, were you recording conversations you had

Mo - Cross

393

1 with Mr. Young in May and June?

2 THE WITNESS: No.

3 BY MR. SMITH:

4 Q. You testified earlier today that you never met with
5 Mr. Young on an occasion in which you did not record the
6 conversation, correct?

7 A. Correct.

8 Q. And you acknowledged that the memorandum in front of you
9 on May 22, 2014, reflects a meeting you had with Mr. Young,
10 correct?

11 A. Correct.

12 Q. And you've testified earlier that July 2014 was the first
13 time that you recorded a meeting with Nicholas Young, correct?

14 A. Yes.

15 Q. Thank you.

16 Turn to DX-4, please. Do you see the date on that
17 memorandum? Excuse me, do you recognize the author of the
18 memorandum?

19 A. I do.

20 Q. Who is it?

21 A. John Minichello.

22 Q. He's your agent handler, right?

23 A. Yes.

24 Q. Do you see the June 5 date in the body of the memorandum,
25 June 5, 2014?

Mo - Cross

394

1 A. I see a -- I see a June 9.

2 Q. It's DX-4.

3 A. I am looking at DX-4.

4 I see it in the body now.

5 Q. Do you see it?

6 Does this reflect a meeting between you and Nicholas
7 Young on June 5, 2014?

8 A. Yes. It was a group of friends. We were all there at a
9 little, little Italian restaurant.

10 Q. Right. And every time you met with Nicholas Young, there
11 was an audio recording, right?

12 A. With this group of friends? That was prior to the
13 recording starting. This one you're referring to --

14 Q. Nicholas Young is mentioned in that memorandum on June 5,
15 2014, correct?

16 A. Correct.

17 Q. And you've testified today that the first -- you never had
18 a meeting with Nicholas Young without recording it, correct?

19 MR. GIBBS: Judge, that's been asked and answered.

20 THE COURT: Sustained. Let's move this along.

21 BY MR. SMITH:

22 Q. Can you turn to DX-5, please?

23 A. Okay.

24 Q. Do you see the author of that memo? It's John Minichello,
25 right?

Mo - Cross

395

1 A. Yes.

2 Q. He's your agent handler, right?

3 A. Correct.

4 Q. Do you see the June 29 date?

5 A. I see it.

6 Q. Does this reflect a meeting you had with Nicholas Young on
7 June 29, 2014?

8 A. Yes, Nicholas was present.

9 Q. Was this meeting recorded?

10 A. No.

11 Q. Did you discuss ISIS with Nicholas Young on June 29, 2014?

12 A. Can I read this?

13 Q. Well, first you have to try -- do you remember? Do you
14 recall discussing ISIS? Sir --

15 A. I don't recall. I would have to --

16 Q. You can't recall, okay.

17 Did your agent handler ever instruct you not to
18 record a meeting with Nicholas Young?

19 A. Did he not --

20 Q. Did he instruct you to go on certain meetings --

21 A. No.

22 Q. -- with Nicholas Young and not record?

23 A. And not record?

24 Q. Yes.

25 A. No. I don't seem to understand --

Mo - Cross

396

1 Q. So you're acknowledging that this June 29 date, meeting
2 between you and Nicholas Young that you allege was not
3 recorded, correct?

4 A. No, it was -- it wasn't recorded by audio; however, I
5 would --

6 Q. It wasn't -- excuse me, what did you say?

7 A. It wasn't recorded through audio, but I would, I would
8 pass on information to him, yes. This entire time, I would
9 pass on information every time.

10 Q. And why were you not wearing a wire on this occasion?

11 A. I'm not familiar how FBI does, like, how they acquire it.

12 Q. Who makes the decision whether you wear a wire when you
13 meet with Nicholas Young?

14 A. I do not know.

15 Q. You don't know?

16 A. Are you asking me who in the FBI makes that decision?

17 Q. Yes. When you would go out and meet with Nicholas Young
18 as a paid informant, would your agent handler direct you to
19 wear a wire?

20 A. Yes, my agent, my agent would direct me.

21 Q. And there were occasions when he directed you not to,
22 correct?

23 A. Not to, not to wear a wire?

24 Q. Wear a wire in a meeting with Nicholas Young, correct?

25 MR. GIBBS: Judge, objection. The witness already

Mo - Cross

397

1 testified that starting in July, he was recording all of his
2 meetings. This is a rehash.

3 THE COURT: This is a slightly different question,
4 though. The question is whether anybody at the FBI ever told
5 Mo not to wear a wire when he was communicating with Mr. Young.
6 That's the question.

7 Do you understand the question?

8 THE WITNESS: No one told me that.

9 BY MR. SMITH:

10 Q. No one told you that. So on this occasion on June 29,
11 reflected in DX No. 5, the document in front of you --

12 A. Yes.

13 Q. -- you have testified you were not wearing a wire,
14 correct?

15 A. Correct.

16 Q. And why were you not wearing a wire on this occasion?

17 A. Because it was prior to when the FBI told me to wear a
18 wire.

19 Q. So the decision of whether to wear a wire is up to the
20 agent handler, not you, correct?

21 A. Correct.

22 Q. There were occasions when you wore a wire when you did not
23 tell the agent handler, correct?

24 A. That is not correct.

25 Q. It isn't?

Mo - Cross

398

1 A. No.

2 Q. Thank you.

3 Can you turn to DX-6, please? Excuse me, in the same
4 document, DX-5, please find the date July 6. It's below the
5 June 29 date.

6 Do you see July 6?

7 A. Is it on the first page?

8 Q. Mo, have you ever lied to the FBI?

9 A. Yes.

10 Q. You have. How many times?

11 A. Once.

12 Q. Once? When was that?

13 A. I can't recall the date, but I did.

14 Q. Do you see the July 6 date in that memo, DX-5?

15 THE COURT: You can lead him. Just get him right to
16 the page.

17 MR. SMITH: It's on the page. It's on that one page.

18 THE COURT: All right, ask the question.

19 THE WITNESS: Yes, I see July 6.

20 BY MR. SMITH:

21 Q. Does that reflect a meeting you had with Nicholas Young on
22 July 6, 2014?

23 A. That looks correct.

24 Q. Right. Did you have that meeting with Nicholas Young on
25 July 6, 2014?

Mo - Cross

399

1 A. Yes.

2 Q. Do you remember it?

3 A. Not entirely, but yes.

4 Q. Okay. Do you see where it says you discussed ISIS with
5 Nicholas Young, July 6? Look for the word "ISIS" on that memo.

6 A. I see. I see where you're saying.

7 Q. Do you remember that conversation?

8 A. Not entirely, but yes.

9 Q. Not entirely, but yes?

10 A. As in, like, the scope of the conversation, yes, but I
11 haven't looked at this reporting.

12 Q. Please go to DX-6, please. It reflects a meeting on
13 July 13, 2014.

14 A. I'm looking at it.

15 Q. Was this meeting recorded between you and Nicholas Young?
16 I'm just -- no? Was it recorded?

17 A. When you say "recorded," like, did I report it?

18 Q. Record it. Were you wearing a wire during that meeting?
19 No, I'm asking you if you wore a wire, not what the --

20 A. May I look at the --

21 Q. The memo doesn't say. I'm asking you whether you recall
22 wearing a wire.

23 A. I need, like -- I need to read the information to
24 understand so I can refresh my memory.

25 Q. I'm saying did you wear a wire on July 13, 2014?

Mo - Cross

400

1 A. Yes. I wore a wire starting in July, yes.

2 Q. Okay. Okay. Mo, you've testified today about some of
3 these clips from meetings you were wearing a wire on with
4 Nicholas Young during your meetings.

5 A. Yes.

6 Q. And this began in July 2014, correct?

7 A. Yes.

8 Q. Those clips we played from July 27 -- July 27, August 10,
9 September 11, October 2, October 10, October 16, October 17,
10 October 23, October 24, and October 25, those did not -- those
11 were clips from the meetings, correct, selections from your
12 entire conversation with Nicholas Young, correct?

13 A. Yes.

14 Q. Those clips were not the entire conversation you had with
15 Mr. Young on those given days, correct?

16 A. They were --

17 Q. There was conversation that was recorded on those days I
18 just listed but was not played in court, correct?

19 A. Correct.

20 MR. SMITH: Let me pull up September 11, 2014, and
21 start at 42 minutes, 54 seconds. Don't start it yet.

22 MR. ENNS: What is the time?

23 MR. SMITH: The time is 42 minutes, 54 seconds, but
24 don't play it yet.

25 Q. So, Mo, on -- you testified about September 11, 2014,

Mo - Cross

401

1 correct?

2 A. Yes.

3 Q. Didn't you tell Nicholas that you wanted to help out in
4 Syria and Nicholas responded, "Why now?"

5 A. Yes.

6 Q. And didn't Nicholas argue that no one restricts us from
7 practicing our religion here? By "here," he meant the United
8 States?

9 A. Can, can you --

10 Q. Didn't Nicholas argue on September 11, 2014, one of the
11 dates you testified about today, that no one restricts us from
12 practicing our religion here, meaning you had brought up the
13 subject of ISIS on this date, and Nicholas responds, "Why now?
14 No one restricts us from practicing our religion here."

15 Do you remember that?

16 A. I recall.

17 Q. You recall it?

18 A. Yes.

19 Q. Do you recall it specifically?

20 A. It was part of the conversation.

21 MR. SMITH: Right. Please play 42, 42 minutes, 54
22 seconds. Can you turn it up?

23 You're on September 11, 2014.

24 (Audio excerpt was played.)

25 BY MR. SMITH:

Mo - Cross

402

1 Q. Mo, did you -- it's kind of hard to hear the conversation.
2 We are marking that audio clip on September 11, 2014, between
3 the minutes 42 minutes, 54 seconds, and 46 minutes, 45 seconds,
4 as Defense Exhibit, I believe it's 10 now. It's kind of hard
5 to hear the audio on that clip, but did you hear Mr. Young
6 referencing Abdullah?

7 A. Yes.

8 Q. Who is Abdullah?

9 A. I'm not familiar with who Abdullah is at the moment.

10 Q. But you heard Mr. Young referencing an Abdullah who had
11 something to say about a concept of not rebelling against the
12 legitimate government, correct? Did you, did you catch that?

13 A. Yes.

14 Q. And you've heard Mr. Young make that statement, right?

15 A. Yes.

16 Q. So what Mr. Young was saying right here when you were
17 telling him, "Wouldn't it be more free, wouldn't it be more
18 liberating to move abroad and overseas?" is Mr. Young was
19 telling you about Abdullah, who is citing this Islamic concept
20 that you can't overthrow a legitimate government, correct?

21 A. What Mr. Young was saying? Correct.

22 Q. Mr. Young had told you this before, right, before
23 September 11, 2014? He had told you about this concept that
24 it's un-Islamic to overthrow the legitimate government,
25 correct? He had told you this before?

Mo - Cross

403

1 A. Yes.

2 Q. When did he tell you that?

3 A. I don't recall.

4 Q. But you remember him saying that to you on multiple
5 occasions, right?

6 A. Everything that I've -- I reported, I reported to either
7 in the recording or in audio, but yes.

8 Q. Your first audio recording was on -- with Mr. Young was on
9 July -- in July 2014, right?

10 A. Audio recording, correct.

11 MR. SMITH: Right. Play the May 31 recording, 14
12 minutes, 40 seconds.

13 (Audio excerpt was played.)

14 MR. SMITH: Now, pause it.

15 Q. Whose voice is that?

16 A. It sounds like my voice.

17 MR. SMITH: Right.

18 Keep playing.

19 (Audio excerpt was played.)

20 MR. SMITH: Pause it.

21 Q. Whose voice is the second voice, the one who's responding
22 to you?

23 A. The defendant.

24 MR. SMITH: Okay. Keep playing.

25 (Audio excerpt was played.)

Mo - Cross

404

1 MR. SMITH: Pause it.

2 Q. Did you hear what Mr. Young said on the recording?

3 A. It doesn't sound clear.

4 Q. Didn't Mr. Young tell you when you -- you raised the
5 subject of the Soviet invasion of Afghanistan in that clip,
6 right?

7 A. Yes.

8 Q. And doesn't Mr. Young say -- question you and say, "Are
9 they rebels? Are they mujahideen?" which is something noble,
10 right, according to you in that comment? I mean, he says, "Are
11 they mujahideen, or are they criminals because they've rebelled
12 against the legitimate government?"

13 Did you hear that?

14 A. Yes.

15 Q. And Mr. Young makes a similar comment on September 11,
16 2014, correct?

17 A. Yes.

18 Q. Now, turn quickly, really quickly back to DX-3 in front of
19 you, sticky note DX-3. Do you see, do you see it's a
20 memorandum by John Minichello?

21 A. Yes.

22 Q. Do -- so flip to the second page, and do you see where it
23 says: Mr. Young appears to agree that -- with Peshwaz that the
24 Soviet invasion of Afghanistan, there was a legitimate jihad?
25 Do you see that paragraph?

Mo - Cross

405

1 A. Yes.

2 Q. That's reflecting the conversation we just listened to,
3 right?

4 A. This conversation?

5 Q. Yeah, the conversation we were just listening to on the
6 audio recording. That's -- this memorandum you're looking at
7 is reflecting a -- just read the memorandum, that paragraph.

8 A. Read it out loud?

9 Q. Sure.

10 A. "Nick appeared to agree with Peshwaz and stated that the
11 Soviet invasion of Afghanistan was a legitimate jihad. Nick
12 argued that there is currently no khalifa, so Muslims cannot
13 rely on the government to declare jihad. T.J. stated that
14 jihad was declared in Egypt, and Hall responded saying that
15 nobody mobilized. Nick stated that the situation in Egypt
16 showed that relying on governance to declare jihad does not
17 work. He also said that if an individual could help defend
18 fellow Muslims, they should do so."

19 Q. That's the recording -- the memorandum you're reading
20 right now reflects a summary of the recording we were just
21 listening to, correct?

22 A. Yes.

23 Q. Thank you.

24 That was on May 31, 2017, correct?

25 A. That recording?

Mo - Cross

406

1 Q. That, what you were just reading. You see it's drafted on
2 June 6, 2014. Do you see that, DX-3?

3 A. Yes.

4 Q. And so -- and if you flip to the next page, the Soviet
5 invasion of Afghanistan, that reflects the May 31 meeting you
6 had with Mr. Young, right? And that's the clip we were just
7 listening to? Yes?

8 A. Yes.

9 Q. Thanks.

10 On September 11, Nicholas told you he had been
11 against ISIS because of all the bad stuff he was hearing about
12 them, right?

13 A. Yes.

14 Q. He told you on the same day that when he saw Baghdadi's
15 mug shot on the news, he thought they sounded like a bunch of
16 criminals who were hungry for power and money, right?

17 A. I don't recall.

18 Q. You don't recall? It's on -- do you see that memorandum
19 in front of you is dated, reflects the meeting you had with
20 Mr. Young on September 11, 2014?

21 A. Yes.

22 Q. So you flip to page 12. The page numbers are at the
23 bottom. It's up near the top of the page.

24 Didn't Nicholas tell you that when he saw Baghdadi's
25 mug shot on the news, he thought they sounded like a bunch of

Mo - Cross

407

1 criminals who are hungry for power and money?

2 A. Yes.

3 Q. On September 11, didn't you tell Nicholas, "I've kind of
4 made up my mind to go to Syria," to which Nicholas responds,
5 "It's kind of nice in the U.S., isn't it? Good opportunities"?

6 A. Yes.

7 MR. SMITH: Let's play that. Can you go to
8 September 11, 2014, 1 hour, 51 minutes, 42 seconds?

9 (Audio excerpt was played.)

10 MR. SMITH: We're moving into evidence as Defense
11 Exhibit 11 a September 11, 2014, audio at 1 hour, 51 minutes,
12 42 seconds, to 1 hour, 54 minutes, 45 seconds.

13 MR. GIBBS: No objection, Judge.

14 THE COURT: We'll have to see how that goes in, but
15 all right.

16 BY MR. SMITH:

17 Q. Mo, on September 11, 2014, Nicholas told you that Muslims
18 are not allowed to spy on each other, right?

19 A. Correct.

20 Q. And he told you that if somebody -- that there's a
21 difference, there's something -- he said there's an exception,
22 right? Do you remember what his exception was?

23 A. Not exactly, but yes.

24 Q. Didn't he tell you that spying on other Muslims would be
25 legitimate if there's violence involved, in any potential

Mo - Cross

408

1 violence?

2 A. Correct.

3 MR. SMITH: Can you play, can you play 9/11/2014,
4 2 hours, 19 minutes, 14 seconds?

5 THE COURT: Mr. Smith, I have to tell you that unless
6 the jurors have much better hearing than I do, I don't think
7 other than traffic, we're getting anything out of these tapes.
8 It's not helping.

9 MR. SMITH: Your Honor, we're going to move each
10 selection into evidence and then allow the jury to listen to
11 the recordings with headphones and then also move in the
12 transcript of the recording. The reason we're doing it both
13 ways is because the government often did not reflect the entire
14 conversation in the transcript.

15 THE COURT: We should have the transcripts now and
16 not at some later time because there's no way of being able to
17 compare what we're seeing the way we did with the government.
18 We could look at the transcript and we could be hearing. We're
19 not going to be doing this case piecemeal like that. You
20 should have the evidence ready at this point if you're going to
21 be playing it.

22 MR. SMITH: Your Honor, this is all of the evidence
23 that the government presented to it, and we're also going to
24 introduce into evidence every transcript that the government
25 gave us.

Mo - Cross

409

1 THE COURT: Well, whether I'll permit it is another
2 question. Let's continue this. But I'm just thinking -- raise
3 your hands, folks. Are you able to hear anything reasonably on
4 this?

5 A JUROR: A little.

6 THE COURT: Just a little? A very small amount.
7 It's terribly difficult to put a case on like this.

8 So ask your questions of the witness, all right, but
9 in terms of just sitting here and listening to a lot of
10 tapes --

11 MR. SMITH: Your Honor, I will ask the questions, and
12 if the witness does not recall Mr. Young's comment to him, I
13 will play the recording and introduce it into evidence.

14 THE COURT: Well, we'll see. Let's ask the question.
15 BY MR. SMITH:

16 Q. On September 11, 2014, Nicholas told you that if someone
17 was going to blow up a subway, you should notify him because he
18 would stop it, correct?

19 A. Correct.

20 Q. On September 11, 2014, Nicholas told you he wanted to make
21 someone's life better in response to your comment that you were
22 young and restless, correct?

23 A. I do not recall.

24 MR. SMITH: This is a short clip, Your Honor,
25 September 11, 2014, 1 hour, 2 minutes, 42 seconds.

Mo - Cross

410

1 (Audio excerpt was played.)

2 BY MR. SMITH:

3 Q. When you mentioned on September 11, 2014, that you wanted
4 to go abroad and you had made up your mind, didn't Nicholas
5 push back and say he sees younger guys like you talking
6 radically, right?

7 A. Yes.

8 Q. And he said he didn't mean to insult you, but he said,
9 "I'm older than you," right, and, "I'm a little bit less
10 radical than you," right?

11 A. I don't recall.

12 MR. SMITH: September 11, 2014, 1 hour, 9 minutes, 22
13 seconds. 1 hour, 9 minutes, 22 seconds.

14 (Audio excerpt was played.)

15 MR. SMITH: Stop it.

16 We're introducing that clip as Defense Exhibit 12,
17 which is September 11, 2014, 1 hour, 9 minutes, 22 seconds, to
18 1 hour, 13 minutes.

19 Q. Mo, in that clip, Mr. Young said he was thinking about
20 younger brothers who went overseas, right?

21 A. Yes.

22 Q. And Mr. Young said: Why this narrow criteria they've set
23 for themselves? Why do they have this narrow criteria they set
24 for themselves, right?

25 A. Yes.

Mo - Cross

411

1 Q. And by "narrow criteria," Mr. Young meant why do they
2 believe they have to go overseas to fight, right?

3 A. Yes.

4 Q. On September 11, 2014, you told Nicholas that the dictator
5 of Syria was burying innocents up to their necks, torturing
6 them, and that was a reason to support ISIS, didn't you?

7 A. Yes.

8 Q. You would frequently have conversations about Dictator
9 Assad of Syria and how he was butchering civilians, correct?

10 A. Yes.

11 Q. You were instructed by your agent handler to use the
12 subject of Syria and Assad in discussions with ISIS about
13 Nicholas -- with Nicholas about ISIS because you knew Nicholas
14 had an interest in geopolitics, correct?

15 A. Yes.

16 Q. You played on Nicholas Young's interest in geopolitics to
17 get him to talk about ISIS, correct?

18 A. Yes.

19 Q. In response to your comment that the dictator of Syria was
20 burying innocents up to their necks and torturing them,
21 Nicholas told you he was against ISIS months before that,
22 correct?

23 A. Yes.

24 Q. You testified about your conversations with Nicholas on
25 October 2, 2014, today, correct?

Mo - Cross

412

1 A. Yes.

2 Q. When you told Nicholas that you had firmed up your
3 decision to go to Syria, to go abroad to Turkey, Nicholas told
4 you to find another job in the same field in America, correct?

5 A. In the same field?

6 Q. He told you to get -- you told him you'd lost your job,
7 right?

8 A. Correct.

9 Q. Why did you tell him you'd lost your job?

10 A. Because I actually did lose my job.

11 Q. You were being paid by the FBI to inform on Nicholas,
12 correct?

13 A. Yes, during that time.

14 Q. Is that paid work?

15 A. From that period when I met, yeah, Nicholas Young.

16 Q. So when you -- you told Nicholas Young you had lost your
17 job on October 2, 2014, correct?

18 MR. GIBBS: Objection, Judge. Asked and answered.

19 MR. SMITH: Okay.

20 THE COURT: Sustained.

21 BY MR. SMITH:

22 Q. On October 2, 2014, Nicholas told you to find another job
23 in America, right?

24 A. Yes.

25 Q. Now, you've testified today about a conversation you had

Mo - Cross

413

1 at Hicham Hall's house on October 9, 2014. Do you remember
2 that?

3 A. I do.

4 Q. And there was a clip played from that meeting on
5 October 9, 2014, where Hicham is kind of ranting at you, right?

6 A. Yes.

7 Q. That conversation you had with Hicham was when you were
8 inside Hicham's house that evening after dinner with Hicham's
9 family, correct?

10 A. Correct.

11 Q. But then you walk out of the house with Nicholas and
12 Hicham, and then Hicham confronts you after that conversation,
13 correct?

14 A. Correct.

15 Q. Hicham says essentially: All of this ISIS conversation
16 you're talking about, you need to be careful, and, you know, if
17 I ever see you again, I might inflict physical harm on you.

18 Do you remember that?

19 A. I do.

20 Q. That happened after the conversation that you had with
21 Hicham that was played today, correct?

22 A. You mean, like, after the recording?

23 Q. There was a clip that we played today from your meeting
24 with Hicham and Nicholas Young on October 9, 2014, correct?

25 A. Correct.

Mo - Cross

414

1 Q. And that conversation from the clip took place in Hicham
2 Hall's house that evening, on October 9, correct?

3 A. Correct.

4 Q. But when you left his house that evening after that
5 conversation for which we played the clip, Hicham Hall
6 confronted you about your interest in ISIS, correct?

7 A. Yes.

8 Q. He said, "If I ever see you again, I might inflict
9 physical harm on you because of your interest in ISIS,"
10 correct?

11 A. I can't recall if he said exactly that, but --

12 Q. Essentially?

13 A. Yes, essentially.

14 Q. And that happened after Hicham's conversation with you,
15 right?

16 A. Yes.

17 Q. Didn't one day -- you testified about October 10, 2014,
18 correct? That's one day after the meeting at Hicham's house?

19 A. Yes.

20 Q. You testified today about your meeting with Nick on
21 October 10, 2014. We played a clip from it, correct?

22 A. Correct.

23 Q. Didn't Nicholas Young tell you on October 10, one day
24 after the meeting at Hicham's house, that Hicham was speaking
25 from his heart and that Nicholas Young understood where he was

Mo - Cross

415

1 coming from?

2 A. I don't recall that.

3 MR. SMITH: October 10, 2014, 2 hours, 34 minutes.

4 October 10.

5 MR. ENNS: 2 hours, 34 minutes?

6 MR. SMITH: 2 hours, 34 minutes. This is only one
7 minute long. 2 hours, 34 minutes.

8 (Audio excerpt was played.)

9 MR. SMITH: Tap me when you've got it, okay?

10 (Audio excerpt was played.)

11 BY MR. SMITH:

12 Q. So didn't Nicholas tell you the next day, on October 10,
13 2014, that he understood where Hicham was coming from?

14 A. Yes.

15 Q. And -- but when he said that, "I understand where Hicham
16 is coming from," he was referring to when Hicham confronted you
17 the evening before, correct?

18 A. Yes.

19 Q. So when the prosecutor in your direct testimony asked you
20 whether -- suggested Nicholas was agreeing with Hicham's
21 comments to you inside the house, that's not what Nicholas
22 Young was referring to on October 10, was it?

23 A. He's referring to what Hicham has stated.

24 Q. When Mr. Young told you on October 10, 2014, that he
25 understood where Hicham was coming from, Mr. Young was

Mo - Cross

416

1 referring to when Hicham confronted you about ISIS the night
2 before, correct?

3 MR. GIBBS: Judge, he can't say what Mr. Young was
4 thinking.

5 THE COURT: Sustained.

6 BY MR. SMITH:

7 Q. Didn't -- on October 10, 2014, the same day we're talking
8 about, didn't Nicholas tell you to constantly purify your
9 intentions?

10 A. He did.

11 Q. Didn't he tell you you should always follow your
12 conscience?

13 A. Yes.

14 Q. Didn't he suggest that this idea you have of going
15 overseas might be an opinion you have that you're sticking to
16 out of pride?

17 A. I don't recall that.

18 MR. SMITH: This is 30 seconds, Your Honor.
19 October 10, 2014, 38 minutes, 39 seconds.

20 You let me know when you get those, okay?

21 MR. ENNS: 38 minutes, 39 seconds.

22 MR. SMITH: Yeah.

23 THE COURT: Let's move this along. Come on, ask your
24 next question.

25 BY MR. SMITH:

Mo - Cross

417

1 Q. So you agree that on October 10, he told you to purify
2 your intentions?

3 MR. GIBBS: He just testified, Your Honor, he
4 couldn't remember.

5 THE COURT: Sustained.

6 BY MR. SMITH:

7 Q. On October 10, 2014, didn't Nicholas tell you, "You're
8 going to get grilled if you go to Syria and come back"?

9 A. Yes.

10 Q. He told you this a lot, right?

11 A. Yes.

12 Q. He told you on multiple occasions right around the time
13 you left for Syria on October 25, 2014, correct?

14 A. Correct.

15 Q. Didn't he tell you he personally would be afraid to do
16 that because you're going to get caught?

17 A. Yes.

18 Q. At the end of your meeting on October 10, 2014, didn't
19 Nicholas suggest to you that you might be feeling pressured and
20 not to change your mind about Syria at the end of the meeting?

21 A. I don't recall.

22 MR. SMITH: The paralegal now explains that he's
23 good.

24 Please play October 10, 2014, 56 minutes, 54 seconds,
25 to the end.

Mo - Cross

418

1 MR. ENNS: One more time?

2 MR. SMITH: October 10, 2014, 56 minutes, 54 seconds.

3 (Audio excerpt was played.)

4 MR. SMITH: Is this October 10?

5 (Audio excerpt was played.)

6 MR. SMITH: Stop it. Stop it.

7 Q. You testified about your meeting with Nicholas Young on
8 October 16, 2014, correct?

9 A. Correct.

10 Q. During that meeting, you attempted to have Nicholas offer
11 to purchase your vehicle, your Jeep, right?

12 A. Did I offer him to buy?

13 Q. Your agent handler instructed you before this meeting to
14 see whether Nick might be willing to buy your Jeep before you
15 went overseas, right?

16 A. I don't recall.

17 Q. Do you recall trying to sell your Jeep before you went
18 abroad?

19 A. I do recall trying to sell it, but I don't recall trying
20 to sell it to him.

21 Q. You tried to sell it to him, and he didn't agree to buy
22 your Jeep, did he?

23 A. I don't recall.

24 Q. Now, in your direct testimony, you testified that on
25 October 16, 2014, it was Nicholas Young's idea to create a Kik

Mo - Cross

419

1 account, right?

2 A. Yes.

3 Q. It was actually your idea, wasn't it?

4 A. To create a Kik account?

5 Q. Yeah. It was your idea. You came up with the idea of Kik
6 because Nicholas told you that he's not familiar -- he's not
7 tech savvy, he doesn't know about Kik, correct?

8 A. No, that's not true.

9 Q. It was your idea to come up with Kik, wasn't it?

10 MR. GIBBS: He just answered the question. Asked and
11 answered.

12 THE COURT: Sustained. Sustained.

13 BY MR. SMITH:

14 Q. On October 10, 2014, during your conversation with Nick
15 about e-mails when you travel abroad, you told Nick you'd have
16 your sister and mom's contact information in your phone,
17 correct?

18 A. I don't recall.

19 Q. During this meeting on October 10, 2014, you said that the
20 whole purpose of your booking of the tour in Turkey was to have
21 a good story, and Nicholas said, "You should actually take the
22 tour," didn't he?

23 A. Yes.

24 Q. During this meeting, Nicholas asked you whether you might
25 go from Turkey to Palestine instead of Syria, correct?

Mo - Cross

420

1 A. Yes.

2 Q. You didn't correct him, did you?

3 A. I'm sorry?

4 Q. You didn't say, "No, I'm not going to Palestine," did you?

5 A. No.

6 Q. During this meeting on October 10, 2014, Nicholas
7 cautioned you that it's tough to leave something you know for
8 something you don't, didn't he?

9 A. I don't recall.

10 Q. During this meeting, Nicholas -- you asked Nicholas if he
11 wanted to go to Syria, and he said, "No, I'd rather go to
12 Libya, where I have friends," right?

13 A. Say that again?

14 Q. During the meeting on October 10, 2014, you asked Nicholas
15 if he wanted to go to Syria, right?

16 A. Correct.

17 Q. And he said, "No, I'd rather go to Libya. I have friends
18 there." Right?

19 A. Yes.

20 Q. At some point during your meeting on October 10, 2014,
21 Nicholas told you why he decided to stay in the U.S. and not go
22 back to Libya again, right?

23 A. I don't recall.

24 Q. He told you it was his girlfriend, his Canadian
25 girlfriend, right?

Mo - Cross

421

1 A. I don't recall.

2 MR. SMITH: Your Honor, we have to play October 16,
3 2014, 2 hours, 22 minutes, 30 seconds. This is October 16,
4 2014, and it's at 2 hours, 22 minutes, 30 seconds.

5 October 16, 2014, 2 hours, 22 minutes, 30 seconds.

6 (Audio excerpt was played.)

7 MR. SMITH: Stop it.

8 Your Honor, we move into evidence that clip from
9 October 16, 2011. It's going to be Defense Exhibit 12.

10 MR. GIBBS: No objection, Judge.

11 THE COURT: All right.

12 (Defendant's Exhibit No. 12 was received in
13 evidence.)

14 MR. SMITH: That's December (sic) 16, 2 hours, 22
15 minutes, 30 seconds, to 2 hours, 23 minutes, 36 seconds.

16 Q. You met with Nicholas Young on October 17, 2014, correct?
17 That's one of the clips you played today.

18 A. Yes.

19 Q. During that meeting, you asked Nicholas Young whom you
20 could trust if you went to Syria, correct? Who could you
21 trust? You're asking Nicholas that question.

22 A. Correct.

23 Q. And he said unlike Libya, the situation there is more
24 complicated, right?

25 A. Yes.

Mo - Cross

422

1 Q. He said in Libya, it was either you're for a dictator, and
2 he was referring to Gaddafi, or you're against a dictator.
3 That was the situation in Libya, right?

4 A. Yes.

5 Q. And he said the situation in Syria is different because
6 there's all kinds of groups and players involved in the war
7 there, right?

8 A. Yes.

9 THE COURT: All right, it's six o'clock. We're going
10 to close it up for today.

11 MR. SMITH: One last comment, Your Honor.

12 THE COURT: No, we're finishing at six o'clock.

13 Ladies and gentlemen, you've been very patient. This
14 evidence, I know, is tough. I want to make sure that everybody
15 gets a good night's sleep. And again, please make sure you
16 avoid any media coverage about this case or anything else
17 related to ISIS or any kind of terrorist issues that might be
18 floating around right now.

19 Again, please make sure that you follow all of my
20 directions about not trying to make up your mind about any
21 issue or communicating about this case. I am going to be
22 putting both sides on a time limit tomorrow so we start moving
23 this case more efficiently.

24 And if you can all try to be here by nine o'clock
25 tomorrow morning, we'd appreciate that, but we'll let you go.

Mo - Cross

423

1 I'm staying in session with counsel for a few minutes.

2 (Jury out.)

3 THE COURT: And the witness may leave.

4 (Witness stood down.)

5 THE COURT: All right, I don't know how in the world
6 this record is going to be put together. The defense
7 absolutely must properly produce this evidence. You're going
8 to need to put your specific clips on one tape. We're not
9 going to have this so that somebody has to go through the tape
10 with a counter. And there has to be a transcript to go with
11 this. It's absolutely incomprehensible. It's gobbledygook,
12 and I've never seen a record quite this bad. I mean, the
13 government's wasn't all that much better.

14 These are terrible tapes. I don't understand why the
15 FBI can't figure out a better way of cleaning up their tapes.
16 I mean, there's obviously important information for both sides
17 which the trier of fact is not going to be able to get in any
18 kind of reliable manner because the tapes are so bad.

19 Now, you mentioned headphones. If you have a
20 headset, is it any easier to hear this stuff? I mean, some of
21 you have been listening to this.

22 MR. SMITH: It is, Your Honor. It's far easier, Your
23 Honor.

24 THE COURT: Well, what I'm going to do then is before
25 the jury comes in, not tomorrow but maybe Thursday, I'm going

1 to come in early and put on a set of headphones, and I want to
2 listen to one of your tapes again, because we should have done
3 that with the jury. You should have given us a heads up on
4 that. We have enough headsets.

5 But in any case, this case has to start moving.
6 We've been extremely slow. There are repetitive questions.

7 Now, you're an excellent -- both sides are doing
8 this, but you're doing it more than anyone else, Mr. Smith:
9 You're repeating answers and making questions longer than they
10 have to be. The prosecution sometimes does that, too. It's a
11 great trick of trial advocacy. I'm not going to permit it now.

12 Questions have to be shorter and more specific. They
13 can't be repeated. We're not going to go over things a second
14 and third time, and I said I'm putting you-all on a time limit.
15 You've got one hour to finish your cross-examination of this
16 witness. So do triage, get your best points out, but that's
17 how we're going to get this case moving.

18 All right, we'll see you-all tomorrow morning at nine
19 o'clock.

20 MR. GIBBS: Thank you, Judge.

21 (Recess from 6:05 p.m., until 9:00 a.m., December 13, 2017.)
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CERTIFICATE OF THE REPORTER

I certify that the foregoing is a correct transcript of
the record of proceedings in the above-entitled matter.

/s/

Anneliese J. Thomson